THE ROLE OF MEDICAL EXPERTISE IN ASSESSING MEDICAL ERRORS AND IMPROVING HEALTHCARE QUALITY

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Abstract:
Once the expert has completed his task and submitted the medical report to the court clerk, if the report complies with all legal procedures, the judge is free to accept or reject it. However, the expert's report can point the way for the judiciary to make decisions based on scientific and medical evidence, clarifying the responsibility of the party causing the harm, whether it is a doctor or another party, in relation to all the opponents in the case, and serving as evidence among the evidence presented.
The report has the force of an official document; therefore, it is not permissible to refute what the expert has established, except by allegation of falsification, since the expert has carried out the examination or witnessed the events within the framework of his mandate. Therefore, the expert report carries considerable weight, making it a strong piece of evidence in establishing the medical liability of the doctor.
***Keywords**: medical liability, medical error, medical harm, expert opinion.*

INTRODUCTION:

The safety of the human body is one of the highest principles protected by divine scriptures and positive laws. While most divine texts prescribe divine punishment for those who violate this safety, positive laws have undergone various developments and changes over the ages regarding the nature of the punishment imposed on those who violate the integrity of the human body. This has led to the recognition of criminal liability in its modern sense for those responsible for such violations.
Given that the medical profession is one of the most involved in ensuring the safety of the human body, this situation has had a negative impact on the relationship between doctors and their patients throughout history. Debate has arisen about the imposition of penalties, established by positive law, on doctors when their actions cause harm to a patient's physical safety.
In ancient times, the practice of medicine was often associated with magic and religion, and was restricted to priests and magicians. Any harm inflicted on the patient was considered to be merely fate or the result of demonic influence, so there was no reason to hold the priest or magician accountable for the harm suffered by the patient.
However, the idea of holding doctors accountable arose in some ancient civilisations that experienced significant developments in their legal systems and medical sciences. Hippocrates played a crucial role in removing magic, superstition and mythical beliefs from medicine and establishing it as a science in its own right. Under the Greeks, doctors could be held criminally liable if the death of a patient was attributed to lack of competence or negligence.
The ancient Egyptians also recognised the responsibility of physicians through the so-called "Sacred Writings", which outlined the responsibilities of doctors who violated the provisions of this text. Penalties could even include the death penalty if a doctor caused the death of a patient.
Similarly, the Code of Hammurabi in ancient Iraq regulated various professions, including surgery and construction, in Articles 215 to 240[1]. Some of these articles imposed penalties on doctors ranging from amputation of the hands to monetary compensation if they caused harm or death to a patient.

[1]- Mohamed Rais, Civil Liability of Doctors in the Light of Algerian Law, Dar Houma for Printing, Publishing and Distribution, Legal Deposit: 2007/1911.

Thus, medical responsibility in these civilisations manifested itself in severe physical punishment for physicians, or in civil compensation for the damage caused to patients or their families in the event of death. The severity of these punishments probably stemmed from the lack of regulation of the practice of medicine, which allowed unqualified individuals to enter the profession. Free Romans, for example, often refrained from practising medicine, considering it a profession reserved for slaves and foreigners.

Since antiquity, the criminal liability of physicians has been the subject of considerable debate in jurisprudence and legal discussions, particularly since the legal field of medicine requires the balancing of two conflicting interests. The first is the need to provide legal protection and the necessary safeguards for doctors to practice their profession in comfort and security, given that the nature of the profession requires dealing with the physical safety of patients. It is unreasonable to apply the same rules of criminal liability to a doctor dedicated to the service of humanity as are applied to ordinary individuals. Otherwise, the liability of every medical practitioner would inevitably exist in all circumstances, which would discourage all members of society from choosing this profession[2].

The second interest is the patient's right to physical safety and protection from any form of injury. This requires the imposition of sanctions on anyone responsible for causing harm to the human body, especially since this problem not only affects the individual victim, but also constitutes a threat to the security and stability of society as a whole, which justifies the imposition of criminal liability on the perpetrator.

This expansion of the scope of medical practice has increased the risks to which patients are exposed as a result of medical interventions. As a result, society's perception of medicine and doctors has changed, leading to greater demands for optimal outcomes and more urgent accountability than before. This expectation is supported by the advanced tools and modern technologies that science has placed in the hands of physicians.

As a result of these changes, there has been a significant movement in the legal field to keep pace with the development and expansion witnessed in the medical field, leading to a marked evolution in the principles of medical liability. Initially based solely on intentional error, the principles now also cover cases of negligence and gross error.

What is the contribution of medical expertise and how does it affect the assessment of error? We will explore these and other questions in two sections: In the first section, we will discuss the legal nature of expertise in general, including its definition, characteristics and legal nature, as well as the distinction between medical experts and forensic experts. In the second section, we will examine the extent to which medical expertise influences the assessment of error, as outlined below:

Section One: The Legal Nature of Expertise

Section One: The Concept of Expertise

Scholars disagree about the legal nature of expertise, giving rise to several perspectives, which we will briefly outline below:

First perspective: Some scholars view expertise as a form of technical testimony. They argue that the similarity between expert testimony and witness testimony lies largely in the procedures and evidentiary value, as both the expert and the witness provide information and both take an oath. However, this perspective has been countered by attempts to highlight the differences between expert testimony and witness testimony, which differ in several respects:

In principle, an expert can be replaced by another specialist in the field, unlike a witness, who cannot be replaced because he is the one who has perceived the facts related to his knowledge. A witness testifies on the basis of what he has perceived through one of his senses, incidentally and without any obligation to guarantee this perception. The testimony of an expert, on the other hand, is initially given on the basis of a mandate and is based on scientific, technical or empirical information.

[2]- Safwan Mohamed Shadifat, Criminal liability for medical acts: A Comparative Study, Doctoral Thesis in Criminal Law, Academic Year 2008-2009, Cairo University, Egypt, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 1st edition, 2011, p. 235.

Second perspective: Another group of scholars believes that expertise is merely a means to evaluate and assess the evidence presented to the judge. This evidence may be ambiguous and present a problem that is difficult for the judge to fully understand, necessitating recourse to experts. In this view, expert evidence is not considered an independent means of proof like other methods such as testimony, inferences and written documents that provide specific evidence. Expert testimony is often used in situations where the validity of other forms of evidence and confessions is in question. Against this perspective, it has been argued that the function of expertise is not limited to the evaluation and assessment of evidence, but extends to the search for evidence that will benefit one of the parties to the dispute. Medical expertise, which aims to investigate the presence or absence of error, is fundamentally a search for evidence rather than an evaluation of existing evidence[3].

Third perspective: Some scholars argue that expert testimony is merely an ancillary procedure for the judge, since it is not, in this view, a means of proof. It is a procedure that helps the judge to supplement his knowledge in a particular field of science or specialisation. Proponents of this view argue that the decision to use expert evidence is entirely at the discretion of the judge, who will decide whether or not to use it.

Fourth perspective: The prevailing view is that expertise is a special form of evidence designed to identify unknown facts by means of known facts. Advocates of this view support their position by stating that expertise provides the judge with evidence relating to a technical and scientific matter which he may not possess due to the nature of his background and knowledge. Furthermore, it may require specific research and practical experimentation that would take more time than the judge has available[4].

Subsection Two: Definition of linguistic expertise

1. Linguistic definition

In linguistic terms, “expertise” refers to knowledge of a thing, and an “expert” is someone who is knowledgeable. The phrase “I experienced the matter” means “I knew it” and “I understood the matter” means “I recognised it for its reality”.

In legal terminology, expert testimony is one of the methods of evidence, also known as technical examination, on which the judge relies to form his or her opinion and conviction based on what experts present. It is a direct method of proof, similar to inspection, in that it is linked to the fact to be proved and is carried out by people who have the expertise in the technical aspects that judges may lack. The purpose of expert testimony is to obtain technical information on matters that may come before the judge, and it is not permissible for the court to decide on technical matters solely on the basis of its own knowledge; rather, it must refer to experts[5].

Imam Abu Mansour Al-Azhari said: “Expertise is a form of testing; you say: ‘You have hidden your knowledge from him’ and ‘You have tested him for ten days’. An expert is one who tests and has experience, and ‘knowledge’ refers to your awareness of something; you say: ‘I have no knowledge of it’, which means ‘I am unaware of it’. An expert is one who knows the matter, and regarding the attributes of God Almighty, the One who knows what was and what will be - that is, the One who knows everything. God says: And no one informs you like the One who knows everything. This means that no one can inform you, O Muhammad, about the idols of these polytheists and what will happen to them and their worshippers on the Day of Resurrection - if they deny them and disbelieve in them - but the One who knows their affairs. This expert is God, who knows everything that has been and will be, glory be to Him.

One of the meanings of expertise is information about what the questioner is asking. The scholar Ibn Manzoor said: “The news is what has come to you about someone about whom you inquire. You say, ‘I informed him’ and ‘I made him aware’, which means ‘I informed him’. To inquire is to ask for news in order to learn it.

From the previous linguistic meanings it is clear that

[3]- Safwan Mohamed Shadifat, ibid, 2011, p. 15.

[4]- Karam Baghashi, Judicial Expertise in Civil Matters, Diwan Al-Matbu’at Al-Jami’iyya, 2009, p. 48.

[5]- Karam Baghashi, ibid, p. 220.

Expertise in language refers to knowledge of the realities of things beyond their appearances, and this knowledge can only be acquired through extensive experience and continuous practice. It also involves the questioning of the expert by the questioner.

2. The terminological definition of expertise:

Medical expertise, in the context of public law, is not a medical act; it is not the diagnosis of a specific medical condition for the purpose of prescribing appropriate treatment. Rather, it is a procedure aimed at obtaining an opinion from specialists on a matter falling within their area of expertise. There are several definitions of expert testimony; some define it as a process entrusted by the judge to a specialised person, known as an expert, with a specific task relating to a fact or facts that require investigation, evaluation or, more generally, the rendering of an opinion on matters that cannot be adequately addressed by a layperson or on which a technical opinion cannot be given[6].

The judge cannot acquire this knowledge alone. Some define expertise as recourse by the judge or the parties to persons specialised in matters with which the judge is presumed to be unfamiliar in order to overcome technical or scientific difficulties relating to the facts of the case. This involves carrying out technical and scientific research and drawing conclusions in the form of a non-binding opinion.

With regard to medical expertise, the Algerian legislator defines it, in article 95 of the Code of Criminal Procedure, as a task carried out by a doctor or dentist appointed by the judge to provide technical assistance in assessing the physical and mental condition of a person and in evaluating issues arising from criminal or civil consequences[7].

3. Distinction between medical expert and forensic doctor:

It is important to note that there is often confusion between the terms “forensic doctor” and “medical expert”. The latter, like other doctors, practises his profession as a technical expert while at the same time practising medicine, whether general or specialised in a particular field. A medical expert only performs his duties at the request of the judicial authorities, without the latter being involved in the treatment of the patient, since it is not possible for a doctor to be both an expert and a treating doctor for the same patient.

On the other hand, a forensic doctor combines two roles: that of a specialised expert who has studied and trained in this field, and that of a public servant attached to the forensic medicine department of public hospitals. The latter’s role is not limited to providing an expert opinion at the request of the judge, but also to preparing reports on suspicious deaths before the case goes to court. These reports are then accepted as evidence in legal proceedings[8].

It is essential to take into account the question of specialisation when selecting a medical expert; it is not reasonable to appoint a general practitioner or a gynaecologist to examine a patient who has suffered an arterial haemorrhage in order to determine whether this was due to the patient’s state of health or to the failure of the treating doctor to take the necessary precautions for her safety.

On the other hand, the multiplicity of facts in medical liability cases and the complexity of technical issues may lead the judge not to rely solely on a medical expert. Instead, they may appoint several experts to ensure that the findings are objective from one perspective and accurate from another. This may involve experts in the same field working together to produce a single report, or experts in different fields, each assigned independent tasks requiring specific technical knowledge not available to the others.

Section Two: The Impact of Medical Expertise on the Assessment of Error

The preparation of the expert’s report on the conduct of the doctor under scrutiny does not mean the end of the matter for the judge. The judge still has to assess the expert’s findings against the legal standard of malpractice. Consequently, the judge’s discretionary power with regard to the

[6]- Mohamed Rais, Scope and provisions of civil liability of doctors and its proof, Dar Houma for printing, publishing and distribution, Algeria, 2005, p. 196.

[7]- Mohamed Rais, ibid, p. 120.

[8]- As’ad Obeid Al-Jumaily, Errors in Civil Medical Liability: A Comparative Study, Dar Al-Thaqafa, Jordan, 2nd edition, 2011, p. 160.

expert's report manifests itself in several ways. On the one hand, the report is open to discussion by the parties, and on the other hand, like other forms of evidence, it is subject to the discretion of the court in assessing the evidence presented.

Subsection One: Discussion of the medical report

The medical report is considered to be one of the pieces of evidence for which the law does not specify any particular probative value, either against the parties or before the judge. This makes it possible to discuss everything contained in the report before the court takes a position, with the parties expressing their opinions and observations on the expert's work and checking that the results obtained are consistent with the research and the tasks assigned to the expert by the court decision[9].

The court may, on its own initiative or at the request of the parties, summon the expert to a meeting determined by the parties to discuss the report that has raised doubts, with a view to clarifying or resolving ambiguous points.

Furthermore, the presence of several experts shall not prevent the discussion of the report drawn up by them and the asking of questions that may be useful to the case. The court may, at its discretion, decide to summon one expert without the others, since it has the power to assess all this.

On the other hand, the national or regional council for medical ethics can provide technical advice in medical liability cases. The judge calls on this body to identify and highlight medical errors in order to establish or refute the doctor's liability, thus avoiding the need to discuss the medical report in order to clarify ambiguities. This procedure is characterised by its evidential value, since the report drawn up by the aforementioned scientific council is, at least in theory, issued by all its members and reflects the collective opinion.

This leads us to conclude that it is not possible for the Court or the parties to dispute the Council's opinion on the matter referred to it. We also note that there is debate and ambiguity surrounding the role of the National Council in providing technical advice, which requires legislative intervention to clarify its mission and to outline the legal value of this council as a moral expert composed of esteemed physicians[10].

It is unreasonable for the judiciary to seek its advice and then not follow its recommendations. In addition, since the Council has the right to act as a civil party to defend doctors, this is a compelling argument for the importance of consulting the Council before imposing sanctions on a doctor.

Thus, the expert's report is always subject to discussion and challenge by the parties to the dispute. For example, a party who has submitted the report in its favour may rely on the research, arguments, opinions and conclusions of the expert, as well as on what is contained in the minutes of the proceedings, to support its claims. That party may also interpret any ambiguous language in the report in a manner consistent with its interests in the case before the court.

Conversely, the opposing party has the right to discuss the contents of the report and to refute its findings by pointing out contradictions within its sections, errors in its data, or flaws in its reasoning or conclusions. They may also challenge the expert's scientific or technical competence on the basis of the deficiencies found in the report. The court also has the right to discuss the expert's report in accordance with Article 64 of the Civil Procedure Code[11].

In this context, the evidential value of the expert opinion may be questioned. When does the court's expert opinion become invalid and what powers does the court have with regard to the expert opinion? What is the status of the expert opinion before the Court of Appeal as a second instance and before the Supreme Council as a court? In general, the report prepared by the expert at the request of the court has the same evidentiary weight as official documents concerning the facts established by the expert on the basis of what he has seen, heard, known or deduced within the scope of the tasks assigned to him. As long as the expert carries out his task of investigation and enquiry, it serves as an official document which cannot be contradicted, except on the grounds of forgery, all the more so as the expert undertakes this task only after taking a judicial oath.

[9]- As'ad Obeid Al-Jumaily, ibid, p. 459.

[10]- Article 64 of the Moroccan Code of Civil Procedure.

[11]- As'ad Obeid Al-Jumaily, Error in Civil Medical Liability, ibid, p. 466.

Thus, the expert's report serves as evidence of various details relating to the date and the presence or absence of the parties in the case before him, as well as all the facts examined by the expert and the personal acts carried out by him within the framework of the scientific and technical mission for which he was appointed. It is unreasonable and illogical to accept testimony that contradicts these details.

In its decision of 23 September 1995, the Supreme Council stated: "However, what has been said in this branch contradicts the reality, since the expert, who is a sworn person, states in his report that he summoned the employers to the expert's proceedings, but they refused to appear on the grounds that they had submitted their declaration to the registry office on 17 February 1977. Moreover, in accordance with the provisions of the decision, the report was sent to the appellant employers, who did not contest it legally, which makes this branch unacceptable"[12].

However, the statements, comments or criticisms made by the parties to the dispute and documented by the judicial expert in his report should allow the court to have full authority in its assessment when forming its opinion on these matters. Anything outside the expert's competence and unrelated to his mission may be refuted by any means of evidence.

It is clear that the results, whether technical or scientific, which the expert arrives at and includes in his report, do not have absolute authority. The parties involved in the case always have the right to prove any errors, omissions or discrepancies with reality, and they may use all possible means of evidence, especially if the judge has confidence in such evidence.

In practice, litigants often request a rebuttal report in order to show contradictions with the expert's findings, or at least to highlight the errors and omissions in the contested report. Moreover, there is nothing to prevent the judge from having recourse to a new expert opinion if he is not convinced by the first one[13].

This is in line with the legal provisions governing the legal system of expertise in Moroccan legislation, as set out in the Code of Civil Procedure.

With regard to the court's powers in relation to the expert's report, it can be said that although it is generally considered to be evidence in the case, it is not conclusive or decisive in a way that obliges the court to accept it. Rather, it is a document from which conclusions are drawn within the discretion of the court. Irrespective of the scientific standing of the expert or the experts who prepared the report, the court may have recourse to additional, new or opposing expert opinions.

In addition, the Moroccan legislator has emphasised the discretionary power of the courts in this regard, as reflected in the last paragraph of Article 66 of the Moroccan Civil Code, which states that "The judge is not obliged to accept the opinion of the expert appointed and retains the right to appoint any other expert to clarify the technical aspects of the dispute". In addition, the last paragraph of Article 2 of Law No. 45.00 states: "Courts may rely on the opinions of judicial experts for guidance, without being obliged to do so". This has been confirmed by judicial decisions, such as the decision of the Supreme Council of Justice of 26 November 1959, which states that "the opinions of appointed judicial experts are not binding on the courts of first instance".

According to Article 140 of the Moroccan Civil Code, "an appeal may be lodged against a preliminary ruling only at the same time and within the same time limit as the final judgment on the merits. The notice of appeal may not be expressly confined to the judgment on the merits; it must also specify the preliminary rulings which the appellant wishes to challenge"[14].

Accordingly, in accordance with the legislative directives, procedural rules and established Moroccan judicial practice, it is essential, on the one hand, to distinguish between the various procedures relating to judicial experts, such as the specific rules governing the appointment of experts, the means of challenging their qualifications, the requirement for them to take an oath if they are not registered on the official list, in accordance with the provisions of Article 18 of Law 00/45 on judicial

[12]- As'ad Obeid Al-Jumaily, Error in Civil Medical Liability, ibid, p. 466.

[13]- Article 140 of the Moroccan Civil Code.

[14]- Ahmed Said Mahmoud, Procedural System of Judicial Expertise in Civil and Commercial Matters According to Egyptian and Kuwaiti Law, Al-Majalla Al-Kubra, Dar Al-Kutub Al-Qanuniya, 2007, p. 102.

experts, and the summoning of the parties and the related time limits. On the other hand, it is important to distinguish this from the essence of judicial expertise, which concerns the conclusions and reports drawn by the expert.

Objections relating to procedural matters must be raised primarily before any arguments or defences on the merits, while those relating to the merits may be raised at any stage of the proceedings. This excludes, however, legal arguments submitted to the Supreme Council on legal issues not previously raised before the judges on the merits.

Thus, legal issues related to public order, even if of a procedural nature, including those that affect the rights of the defence - such as the legal summoning of parties to attend the hearing - may be raised at any stage of the case, including for the first time before the Supreme Council.

In a decision issued by the SCC, it was stated that "Article 63 of the Moroccan Civil Code, which requires the expert to inform the parties of the day and time he will carry out his task, is of a mandatory nature and concerns the rights of the defence and must be respected regardless of the nature of the expert's report. Therefore, the court violated this provision when it justified not summoning the opposing party to attend the medical expertise on the grounds that he was an ordinary person who could not play any role in the subject of the expertise, which relies on information and medical equipment accessible only to the expert..."

Considering that the Court of Appeal is a second instance in the judicial process, it reopens the case, which allows it to verify the results of the dispute and to use any investigative procedures in this regard. This is in addition to the provisions of Article 334 of the Moroccan Civil Code: "The reporting judge shall take the necessary measures to prepare the case for judgement and may order the submission of any documents he deems necessary for the investigation of the case. He may, at the request of the parties or on his own initiative, after having heard the parties or duly summoned them, order any investigative procedure, such as investigations, expert opinions or personal attendance, without prejudice to what the Court of Appeal may subsequently order in open court or in a hearing room".

Undoubtedly, according to the general rules of procedure, it remains the right of the judges of the second instance to adopt the expertise carried out at the level of the first instance. They may annul it in whole or in part, depending on their conviction, and they also have the power to order a new opinion whenever they consider it advantageous, provided that they justify their positions on the basis of the grounds they invoke in this regard[15].

It is clear that the Court of Appeal, which acts as an appellate court for judgments handed down by courts of first instance, is not bound by the findings of the expert report carried out at the initial stage. As mentioned above, it has the power to order a new expertise and to justify its position. In cases where there are several expert opinions, the court may weigh them against each other, accepting those in which it has confidence and rejecting those in which it does not, giving reasons.

With regard to the status of expertise before the Supreme Council, which acts as a court, several observations must be made, the most important of which are:

1. It is never possible to give an expert opinion before the Supreme Council, since an expert opinion is closely linked to the factual aspects of the case and not to the legal aspects.
2. A party to the case cannot argue for the first time before the Supreme Council on issues that were not previously raised before the judges of the case, such as challenging the expertise.
3. The essence of the expert opinion, in terms of the conclusions reached by the expert, falls within the realm of matters of fact, which are within the discretion of the courts of first instance and appeal. It is therefore outside the legal sphere supervised by the SCC.

However, it is possible to challenge procedural issues related to public order that have been violated by the expert, such as the failure to summon the parties to the expert hearing. Challenges can also be lodged regarding violations of the rules of reasoning, for example if the court orders an expert

[15]- Reda Jadawi, supervised by Mohamed Slim Al-Wurailki, Judicial Expertise in Light of Moroccan Law, Research for the Bachelor's Degree in Private Law, Hassan II University, Faculty of Legal, Economic and Social Sciences, 2003-2004, p. 22.

opinion and then disregards its findings without justification, or if it replaces one expert with another without giving a convincing reason[16].

Subsection Two: Nullity of the Expert Report

First: Challenging nullity and its grounds

The Algerian legislator, in Law 08-09[17], specifies only one case in which the expert opinion may be declared null and void, as stated in Article 140, paragraph 2. This case occurs when the expert listed in the register receives fees and expenses directly from the parties involved. However, the challenge of the expert's report may be based on other grounds, which are the grounds for the nullity of procedural acts set forth in Articles 60 et seq. of Law 08-09. It is established that the nullity of the expert opinion as an investigative procedure is determined only by the text, and the burden of proof is on the party invoking the nullity to demonstrate the damage suffered. The judge may set a time limit for the parties to correct the report.

Egyptian jurisprudence has ruled on the nullity of surveys for various reasons, including the surveyor's assessment of the area without inspecting it. The court usually provides the parties with a copy of the expert's report, which is read out by the judge, and they have the right to object to it.

However, the Algerian legislator explicitly states that discussion of the elements of the expert's report - with reference to the report and its findings - cannot constitute grounds for appeal or cassation. This rule is enshrined in Article 81 of Law 08-09[18] on all investigative procedures, which states that such discussions must not have been previously raised before the judicial bodies that ruled on the results of the expert opinion. However, the parties are allowed to discuss and challenge the report before the judge prior to the judgment on the merits, which differs from the old Civil Procedure Code, which allowed challenges to the report independently of the judgment on the merits.

While the amendment is aimed at avoiding costs and litigation, some legal scholars argue that the right to challenge the expert's report before the courts of first instance at various levels is part of the rights of defence and the parties should be able to exercise this right. In our view, however, the provisions of Article [19]145are logical. If the parties object to the expert's report before the judge, this is their right, and this point also applies to administrative cases. If a party does not exercise this right when the case is first heard by the administrative judge, it cannot raise it before the Council of State, as it will be considered a new request that will not be considered.

This view has been confirmed by Egyptian jurisprudence in numerous judgments over almost a century. A challenge to the nullity of the expert opinion can be made if the procedure is fundamentally flawed and results in harm to the party, for example, if the expert sets a date for a meeting with the parties and then changes it without their knowledge. However, it is up to the challenger to prove the validity of his allegations or, in the case of an allegation of falsification, to prove it.

Any report submitted spontaneously by an expert who tries to change his original conclusions will be considered null and void. The judge may, for the sake of inference, rely on an invalid expert opinion if it refers to or supplements a previous expert opinion ordered in a dispute involving the same parties. The invalidity of the expert opinion must be raised at the time of the decision on the merits, even if the expert opinion deals with legal issues[20].

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[16]- Mohamed Kashbour, Judicial competence in civil procedure: A Comparative Study, Casablanca, Al-Najah Al-Jadida Printing House, 2000, p. 106.

[17]- Law 09-08: Code of Civil and Administrative Procedure.

[18]- Article 81 of Law 08-09.

[19]- Article 145: "The decision ordering an expert opinion may not be appealed or challenged in cassation, except together with the judgement resolving the matter in dispute. Discussions related to the elements of the expertise cannot be grounds for appeal or cassation if they were not previously raised before the judicial body that decided on the results of the expertise".

[20]- Mohamed Kashbour, Judicial Expertise in Civil Procedure, ibid, p. 150.

Second: Nullity of the medical report

Nullity is the penalty imposed by criminal procedural law for violation of procedural rules, which renders the procedural act ineffective. The medical report is subject to nullity for failure to comply with its specific provisions. There are two types of annulment:

1. Absolute nullity:

This is a nullity of public policy which may be invoked at any stage of the proceedings, either by the parties or by the court. It is the type of nullity that invalidates the advisory opinion as a procedure, and consequently invalidates any subsequent actions based on it, since anything based on a void advisory opinion is also void. Examples include

- A referral order to the adjudicating body based on a void expert opinion.
- Failure of the expert to personally carry out the assigned task and delegating it to another person.
- The performance of an expertise by an expert whose name has been removed from the list of experts, whether as a result of a criminal or disciplinary decision, provided that the expertise was performed after the removal decision.

2. Relative nullity:

This type of nullity is not of public policy and is made for the benefit of the parties. It must be raised before entering into the merits of the case, otherwise it will not be accepted. This annulment nullifies the expert opinion without affecting other subsequent proceedings. Examples include

- Failure of the expert to take the oath provided for in Article 145 of the Code of Criminal Procedure.
- The expert exceeds the scope of the task assigned to him, as defined in the order of appointment or mandate.
- Failure to comply with the time limit for the submission of the report as provided for in Article 148 of the Code of Criminal Procedure.
- Failure to notify the parties of the expert's report in accordance with Article 154 of the Code of Criminal Procedure.

A condition for invalidity is that the party must have a legitimate interest, as the expert opinion is part of the investigation procedure. If the nullity concerns the expert opinion, the Chamber of Indictment is the competent authority to consider it. If the file is with the investigating judge, Article 191 of the Code of Criminal Procedure states that the Chamber of Indictment shall consider the application for annulment at the request of the investigating judge, after hearing the opinion of the public prosecutor and informing the parties, or at the request of the parties. In addition, the Public Prosecutor may send the file to the Chamber of Indictment after receiving a request from the investigating judge to challenge the invalidity of the expert opinion.

-If the Chamber of Accusation decides that the report is invalid, the report is withdrawn from the file and deposited in the registry of the Council, with the possibility of referring to it for the purpose of extracting elements or accusations, subject to disciplinary sanctions. Subsequent proceedings relating to the report, in the event of its annulment, are governed by the same provisions as those set out in article 157 of the Code of Criminal Procedure. Any decision of the Chamber of Indictment based on an erroneous report is subject to cassation, even if it has not annulled the report, since the Chamber of Indictment clears the proceedings. The appeal is not against the opinion itself, but against the referral decision based on the invalid opinion.

In general, any violation of the procedures related to the appointment of experts and the performance of their duties leads to the nullity of the expertise, which does not comply with the procedures and rules established by the Code of Criminal Procedure. This nullity leads to the annulment of the judgment if the court relied on the expert's report as a basis for its conviction. Furthermore, the parties may not invoke the annulled report against each other or against third parties. The judge may order a new expert report, either by the same expert previously appointed or by another expert in the same field.

It is important to note that an expertise carried out without an order of appointment is null and void, as it would not constitute a valid procedure in the case. If the order of appointment is issued by an unauthorised person, the procedure becomes absolutely null and void and violates the rules of functional jurisdiction.

Third: Effects of annulment

If the court declares the report void, it may order a new report or rule on the merits based on whatever it deems appropriate, meaning that the void report will not serve as the basis for its decision, as any void report loses all value. However, as mentioned above, some may allow the fragmentation of the report by annulling only part of it. From this we conclude that if the court decides to annul the report, it has two options:

1. It may disregard the report and decide the case on the basis of the documents submitted, provided that they are sufficient for a judgement

2. Alternatively, it may decide to carry out a new technical investigation, either by the same experts or by other experts, unless the reason for the annulment of the report relates to a ground for disqualification.

It should be noted that mere ambiguity or insufficiency does not necessarily require a repetition of the expert opinion, but rather a clarification and explanation by the experts themselves to remedy the deficiencies, thus saving time, effort and costs. However, if the court considers the clarifications provided by the expert(s) to be insufficient, or if it finds that the members of the ongoing expert examination are unable to clarify the ambiguities and remedy the deficiencies identified in their assessments, it may, on its own initiative or at the request of one of the parties, order a new technical examination or a supplementary task, which may be assigned to the same expert or to other experts. In its decision, the court must specify the deficiencies or ambiguities which led it to order the new expert opinion. If it does not give reasons for its decision and bases its judgment on the new expert opinion, that judgment will be subject to cassation.

CONCLUSION

From our study of this scientific research, it is clear that expertise is of great importance today, as it is frequently used in various cases and fields. The judicial system cannot do without it because of its direct relationship with technical matters. In order to fill this gap for judges in specific technical areas, it is essential to address the various issues that arise in its application. It is necessary to reform and raise the level of expertise in the Algerian judiciary to match its importance as a fundamental pillar for the delivery of justice. This will give it the necessary effectiveness as an important judicial mechanism that contributes to the proper establishment of the truth, thereby increasing confidence in the expertise that contributes to the implementation of rights and the achievement of justice and fairness.

We have come to a number of important conclusions that lead to a number of recommendations, which we summarise below: Judicial expertise in the medical field is an exceptional procedure ordered by the judge and is a highly precise and competent legal means of evidence that leaves no room for doubt, provided that it is conducted according to established scientific and technical principles and standards in the field.

Judicial reports in medical matters typically contain scientific and technical terminology that is largely absent from the culture and training of judges. In the absence of legal texts specifying the form and content of such reports, the medical expert opinion becomes one of the essential elements on which judges rely when deciding medical cases in order to assess the technical error of the doctor, without being constrained by any limitations.

Given that medical expertise is an exceptional procedure, it should not be over-relied upon. Other means of evidence in this area, such as the patient'

Despite the wide margin of discretion granted to the Algerian administrative judge in dealing with expert opinions and the advisory nature of these opinions, the judge's limited knowledge of the medical field often, if not always, forces him to accept the conclusions of the experts in full.

Judicial expertise in the medical field differs from that in the civil field in terms of the weight of evidence. The latter is not binding and is subject to the broad discretion of the judge in the case, whereas in medical matters the judicial report is implicitly more binding on the judge.

In the light of these findings, we can make some recommendations to enrich the subject and fill certain gaps, which we summarise as follows:

Given that medical expertise is an exceptional procedure, it should not be over-relied upon. Other means of evidence in this area, such as the patient's medical file, can be used. There is a need for legislative texts that define the format of the judicial expertise and the language in which it is drafted, emphasising the need to simplify medical terminology and, where necessary, to explain it in a way that enables the judge to understand the essence of the dispute without any ambiguity.
There is also a need to reconsider the legislative texts relating to the legal nature of the judicial expertise in the medical field, given the nature of the disputes, which involve scientific and technical matters that are often beyond the understanding of the judge. In addition, the importance of the judicial expertise in the adjudication of disputes in the medical field cannot be overestimated, as it is the only effective tool that can be relied upon to resolve the matter in this field.

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