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Profiler as an expert – selected issues[1]

Summary

Despite the fact that criminal profiling attracts massive media attention, our knowledge about the process of elaborating expert opinions containing criminal profiles is very limited. Based on the literature review, the author attempts to answer the questions: what is the objective of appointing an expert in the field of criminal profiling? and, which criteria should be applied to the evaluation of expert opinion?. Based on the content of the present article, it can be concluded that the current state of knowledge does not allow to determine unequivocally whether the profiler needs special knowledge, nor what should be the scope of such knowledge. Moreover, it cannot be clearly determined, whether the profile provides information of relevance to the resolution of the case. However, there is no doubt that wherever criminal profile takes the form of an expert opinion, it should be subject to very careful control, in accordance with the provisions of the Code of Criminal Procedure and doctrine recommendations regarding this matter.

Keywords: criminal profiling, expert, special knowledge

Criminal profiling is a popular subject, gladly addressed by mass culture and mass media. In Poland, it is usually assumed that "profiling is arriving at dynamic characteristics that briefly captivates the traits of an unknown perpetrator and the manifestations of his behavior" (Gierowski, Jaskiewicz-Obydzińska 2002). It is commonly believed that psychologists, owing to their education and professional experience, are particularly suited to work as profilers (Gierowski, Jaśkiewicz-Obydzińska 2002). Therefore, the representatives of this profession draw up criminal profiles as part of expert opinions (Gierowski, Jaśkiewicz-Obydzińska 2002; Cur, 2011; Lach, 2014). Despite the fact that profiling attracts massive media attention, our knowledge about the process of preparing expert opinions containing criminal profiles is very limited. Polish literature dedicated to this subject contains only laconic statements about the requirement to abide by the relevant standards; the same as used in court proceedings and psychiatry. (Piotrowicz, 2011). Only Gołębiowski (2017) provides an example of an opinion prepared for the purposes of legal proceedings. Meanwhile, profiling remains a relatively young and controversial discipline, hence deserving closer attention.

Art. 193, §1 of the Code of Criminal Procedure stipulates that: "If the determination of material facts having an essential bearing upon the resolution of the case requires some special knowledge, the court shall consult an expert or experts". With respect to criminal profiling, the above legal provision prompts the following questions:

- is special knowledge necessary to draw up a criminal profile?,
- what special knowledge is required to draw up a profile?,
- does the criminal profile make it possible to determine the circumstances that have an essential bearing upon the resolution of the case?,
- what is the objective of appointing an expert in the field of criminal profiling?

According to both the case-law and the doctrine, special knowledge exceeds standard publicly available knowledge in a given society, in the field of science, art, technology or craftsmanship (Tomaszewski 2000; Kegel, Kegel 2004). General knowledge available to an adult with an average intelligence, life experience and education is not considered special knowledge (judgment of the Supreme Court of 15.04.1976, no. II KR 48/76).

[1] This article reflects the author's own personal opinions.

Hence, is the knowledge in the fields of science, art, technology or craftsmanship that is unavailable to people of average intelligence necessary to draw up a profile? Considering the fact that, in practice, the opinions are prepared by psychology experts, the above question may seem rhetorical. However, a closer glance at criminal profiling reveals that the answer may not be so obvious.

First, it has not been resolved, what exactly is criminal profiling. The representatives of the American school incline to the view that it is closer to art than science, and requires investigative experience and intuition (Douglas, Ressler, Burgess, Hartman 1986), or even paranormal abilities (Douglas, Olshaker 2006; Turvey 2015) in order to be performed correctly. In turn, researchers centered around the British psychologist, D. Canter, claim that he had developed a scientific method of profiling, based on statistical analysis (Youngs 2013). Finally, one should not ignore the experiments carried out by Pinizzotto and Finkel (1990), and Kocsis et al. (Kocsis, Irwin, Hayes 2002), who tried to investigate whether the profilers have any special abilities, allowing them to draw up more accurate perpetrators' characteristics than those prepared by comparable groups, e.g. police officers, psychologists, university students and clairvoyants. Pinizzoto and Finkel have come to the conclusion that, when working on a profile, the profilers basically do not seem to handle case material in a different manner than non-profilers. Additionally, a series of experiments carried out by Kocsis et al. have led the authors to conclude that logical reasoning is a key element of effective profiling, whereas investigative experience is not indispensable for this process (Olszak-Häußler 2015).

Secondly, there is a widespread view that criminal profiling combines elements of multiple scientific disciplines, among which the most frequently cited are forensics, criminology, psychology, forensic medicine, victimology, psychiatry, sexology, sociology and statistics (Kowalewska-Borys, Kuklo 2015). If indeed special knowledge covers such a wide scope of disciplines, the question should be raised, whether an expert opinion should only be issued by a psychologist or, perhaps, the provision of Article 193 § 3 of the Code of Criminal Procedure should be applied by requesting a joint expertise to be prepared by experts in the above-mentioned fields? Otherwise, the profiler would have to carry out forensic procedures and autopsy, and to formulate conclusions on the mental health of the offender all by himself. It is hard to imagine that all these activities could be performed by a single person, which fact would exclude the appointment of only a psychologist as an expert. Hence, it seems that a key task of the profiler should be to use the results of the above activities in order to identify characteristics of an unknown offender. How should special knowledge be understood in this context? – as the knowledge on how to use the elements of a crime towards the identification of an unknown offender's characteristics. However, such reasoning could lead to the conclusion that each investigator is a profiler, since the conclusions about the offender's characteristics are formulated in the course of each investigative proceeding. Therefore, it seems that, in order for the profile to become something more than a summary of the activities, it would have to contribute added value. In Polish practice, psychology experts who draw up profiles claim that their conclusions are formulated, based on psychological or behavioral traces left by both the offender and the victim (Olszak-Häußler 2016). In the literature there is no conformity with regard to the definition of these concepts. Their meaning spans from forensic traces to "the imprints of the offender's personality" (Cur, 2011). In view of the fact that the concept of "personality" lies within the domain of psychology, it seems that the ability to formulate conclusions concerning an unknown offender's characteristics, based on materials collected in the course of the proceedings, could constitute special knowledge possessed by an expert psychologist – profiler. However, this assumption also encounters obstacles. Namely, the course of a criminal activity and, consequently, traces left on the scene, not only depend on the personality of the offender, but also on the circumstances accompanying the event. For example, the offender may give up his characteristic behavior due to an unexpected reaction of his victim or being frightened by a third party. The literature review leads to the conclusion that, regardless of the criminal profiling method used, special knowledge involves a number of convictions and other information of varying degrees of reliability, such as generalizations (e.g. serial killers kill people of the same race), results of psychological, forensic and criminological studies, as well as autobiographical publications, describing memories and experiences of criminal profilers (Ressler, Shachtman 1993; Douglas, Olshaker 2000; Canter 2000; Britton 2010).

Thirdly, it is difficult to determine, which facts, having an essential bearing upon the resolution of the case, should be revealed by criminal profiling. The usual objective of an expert opinion is to examine traces and determine the relationship between the factual and standard traces. The result of such expertise can be individual or group identification. Group identification consists in assigning the test object to a group of objects with a common set of distinctive features, while individual identification seeks for the specific individual object (Gruza, Goc, Moszczyński 2008). According to the statement that can be frequently found in the literature, criminal profiling may lead to group identification (Konieczny, Szostak 2011). Gołębiowski i Grochowska give the following examples of such identification: "If [...] behavioral traces have been characterized (in the form of a criminal profile of an unknown offender), they can be compared with behavioral traces left by the accused. The aim, therefore, is to be able to carry out "psychological identification". [...] The opinion issued on the basis of psychiatric-psychological examination of the accused could constitute a comparative material, while a criminal profile can be seen in procedural identification as a kind of evidence (deductive profile) or standard material (inductive profile)" (Gołębiowski, Grochowska 14, p. 129–130).

At the same time, the authors mentioned above emphasize that "an immanent feature of a criminal profile is its hypothetical nature", and "possession by the accused of characteristics identical to those specified in the profile indicates certain "potential" and psychological and forensic probability of having committed a crime as alleged" (Gołębiowski, Grochowska 14, p. 130).

Therefore, one should consider, whether criminal profiling actually results in group identification. In classical forensic expertises, group identification consists in assigning a compared object to a particular group. For example, experts ascertain that evidentiary traces were left by a single-track vehicle, or that the evidence secured is cotton fibre. However, as regards criminal profiling, making this kind of explicit statements may raise doubts. Let us assume that one of indicators (traces) of committing a crime was the fact that the victim's corpse was washed after the murder. This trace can be interpreted in many ways: the offender may have attempted to remove other traces from the victim's body; derived pleasure from manipulating the body; felt remorse for a victim who was close to him and tried to make amends to the victim. Based on the first interpretation, it could be concluded that the offender has a criminal history and has come into contact with law enforcement authorities. The second interpretation leads to the assumption that the suspect is unable to interact with living people and satisfies his needs by manipulating the corpses. Finally, a third interpretation would lead to the conclusion that the offender maintained close ties with the victim. By adopting a method proposed by Gołębiowski and Grochowska, one of the above interpretations should be considered the most likely, entered into the profile and used to formulate subsequent conclusions. For example, the interpretation assuming the inability to interact with living persons could entail the conclusion that the offender is a single bizarre person, living on the margin of society, unemployed or performing work which does not require contact with people, etc. A psychological and psychiatric examination could be used as comparative material, from which it could be inferred that the offender is a shy lonely person, etc. Are we dealing with group identification in this situation, namely, should both the offender and his victim be qualified to the group of "shy" individuals, similarly to qualifying a vehicle to the group of single-track vehicles or a fibre to the group of cotton fibres? Assuming that an expert profiler will present three hypotheses based on the above mentioned behavioral interpretations, the question arises: will matching the offender with one of these interpretations be of any value to the court? Consequently, does criminal profiling determine the circumstances having an essential bearing upon the resolution of the case? Theoretically, one can imagine such a situation and consider that it would entail an extensive group identification and issuing alternative opinions by the expert. In practice, however, bearing in mind the current state of research on criminal profiling and the lack of conclusive evidence that it is possible to infer the offender's personality traits on the basis of crime characteristics, it seems doubtful.

Despite the above concerns and due to the fact that expert opinions are issued in the field of criminal profiling, it seems reasonable to discuss such issues as the questions addressed to experts – profilers and the content of their opinions.

Piotrowicz (2011) lists the following questions to be addressed by a criminal profile:

- Can the degree of relationship between the offender and the victim be determined?
- Is the scene of the event known to the offender?
- Does the offender's behavior reflect his criminal experience, and can this experience be categorized (e.g. crimes against life and health, sexual offenses)?
- What was the offender's motivation?
- What is the offender's age?
- What is the offender's gender?

Furthermore, according to Cur (2011), a profiler seeks answers to the following questions:

- What traits and behaviours are characteristic of the offender, and within which circles of people should he be sought for?
- What fate befell the missing person?
- Is it more likely that he/she has voluntarily wandered off or has become a victim of crime?
- Is it more likely that the criminal event was a suicide or a murder?
- Is it likely that a suicidal event could be the result of a suggestion and involve assistance?

Gołębiowski (2017) proposes that the profile should contain the following information: number of perpetrators, race, gender, age, presumed physical appearance, somatic diseases, marital status, member of family, education, profession, course of career, skills and style of communication with people, financial status, criminal history, criminal records, personality features, intellectual ability, possible mental disorders, addiction to alcohol and other drugs , behavioral addictions (e.g. gambling), interests, hobbies, public space and online activities.

Finally, according to Szaszkiewicz (2002), the profiler should seek to verify or evaluate the following information concerning the offender:

- demographic data (origin, environment, place of residence, lifestyle, occupation, financial status, family status);
- psychological traits: intellectual, emotional, sexual drives, psychophysical;
- motivation;
- behaviour and habits;
- criminal tendencies.

As is apparent from the above, the thematic scope of a criminal profile is extremely wide and includes not only information concerning the offender's psychological traits and behaviors, but also socio-demographic characteristics. Therefore, the questions arise: "Is the profiler capable of inferring more information concerning the criminal event than the investigator in charge of the case"? and "Are all of the above mentioned elements within the scope of special knowledge of a psychologist"?

The case studies and exemplary expert opinions available in the literature can be helpful in answering these questions. For example, Gierowski (2007) describes a case of murder of 14-year-old Daniel K., committed by an unknown perpetrator in 1997. As regards this case, the aim of psychological analysis was primarily to determine the offender's motivation and characteristics. The murder was committed in the boy's apartment, whereby the only items missing were a small amount of money and the container with tear gas. There were no signs of tampering. The dressed corpse was lying on the floor. The deceased's pants were unzipped and the belt undone. An autopsy revealed that the victim sustained multiple stab wounds in different parts of the body. The wounds were inflicted with two knives and with varying forces, some of them already in the agonal state of even post mortem. Experts have found that the boy had an enlarged anal opening, which, in their opinion could suggest inserting a foreign body into the anus At the same time, no traces of sperm nor fresh abrasions of the rectal mucous membrane were revealed (Gierowski 2007).

The profiler concluded that the circumstances of the incident excluded an economic motive, however, without specifying the said circumstances. If the profiler's conclusion was drawn on the basis of the cleanliness inside the apartment and the absence of only a small amount of money, then it should be pointed out that this kind of reasoning is routinely applied by investigators and it does not require special knowledge. Another statement made by the profiler concerned the interpretation of the nature of victim's injuries, which, according to Gierowski, suggested that the offender acted under influence of strong emotions and tormented his victim. Considering the fact that the boy was stabbed multiple times and the wounds were of different depth, a question arises again, whether such a conclusion requires above average knowledge. Furthermore, another profiler's statement was notable, namely that "the offender was known to the victim (who let him into the apartment), knew the boy's family situation and the timetables of other household members. Probably, he also had visited this apartment before. A visit to Daniel's apartment on the day of the murder must have been thoroughly planned in advance and adjusted to any circumstances known to the offender" (Gierowski 2007, p. 414). The author has not indicated any traces or circumstances that would justify such conclusions. The facts that no signs of tampering were detected, the event took place in the morning hours when the victim's parents were at work and his sister in school, may entitle the profiler to formulate the above conclusions, albeit without any certainty. Additionally, the above reasoning does not require any special knowledge. In addition, the profile includes information on the offender's strength, physical fitness, age, family situation, occupation and working hours. Also in this case, there were no grounds to draw this kind of conclusions (Gierowski, 2007).

An even more detailed opinion concerning a psychophysical profile of an unknown perpetrator of the murder was issued by Gołębiowski (Gołębiowski, 2017). In the introduction, the author lists the methods applied in his expertise, including B. Turvey's behavioral analysis, the model of profiling violent crimes developed by R. and S. Holmes, forensic medicine experiments carried out by V. and D. DiMaio, and the model designed by J. Gierowski, who used the leading motive and motivational factors for the assessment. It should be noted that both the Turvey and the Holmes methods are the so-called non-scientific profiling models, since they are based on intuitive analysis of traces collected at the crime scene. The Turvey method consists of two elements. The first element is the use of individually understood deductive reasoning, which resembles formulating hypotheses about the offender on the basis of forensic traces. The second element is the behavioural and motivational typology, covering five categories of perpetrators (Hicks, Sales 2015). In the

following section, Gołębiowski lists the consecutive steps of his expertise:
- victimological analysis;
- analysis of illustrative material from the place where the corpse was discovered, including analysis of physical and behavioral traces;
- analysis of injuries sustained by the victim;
- presentation of the most probable behavior of the offender at the scene;
- presentation of the likely course of perpetrator--victim interaction;
- attempt to determine motivational background and leading motives of the perpetrator;
- psychophysical characteristics of an unknown perpetrator.

As in the first example, Gołębiowski also makes a series of statements, which either are not supported by any rationale, or represent conclusions that do not require special knowledge and their accuracy cannot be ascertained. The former group consists of information on education, material status, place of residence, occupation, professional history, psychological traits, the level of emotional development, biographical facts, the use of stimulants, or the possible behaviours after the murder. The latter group includes the following statements: "the traces do not indicate economic motive (no valuable assets missing, no plundering, victim not considered to be rich)"; "no indication of thorough planning of the event (bringing items by the offender, hiding traces)"; "victim gender (female) suggests sexual motive"; "the victim was intoxicated during the course of the event [...], meaning that her behavior was noted for ataxia, delayed reaction time, slowed decision-making processes, euphoric mood, impairment of self-control processes" (Gołębiowski, 2017, p. 257, 260).

Both the expertise and expert opinion are subject to evaluation by the requesting authority. The doctrine stipulates that the evaluation should take an analytical and synthetic approach. An analytical approach addresses the following issues:
- fulfillment of statutory conditions by the expert (professionalism, competence and impartiality);
- relevance and sufficiency of the evidentiary material, based on which the opinion was issued;
- adequacy and sufficiency of the comparative material, where used;
- correctness and way of conducting research within the framework of the expertise (accuracy, independence, contribution from the assistants);
- research methodology adopted by the expert and its adequacy for the conclusions formulated;
- comprehensiveness and clarity of the answers to the questions that have been posed;
- scientific value, internal consistency, accuracy and the degree of probability of the conclusions formulated;
- clarity and logics of reasoning.

A synthetic approach consists of performing a comprehensive evaluation in an attempt to detect the deficiencies of any part of the opinion, examine its compliance and logical order of all its sections (within the same scope, also logical compatibility of analysis reports with final conclusions) and evaluate the opinion and expert's activities against the background of the entire case (Tomaszewski, 2000).

It seems that the evaluation of opinions in the field of criminal profiling should focus on the following requirements:
- whenever the profiler uses the terms "behavioural traces" and "psychological traces", the opinion should contain definitions of these concepts. This is because the analysis of literature in the field of criminal profiling reveals that both terms are assigned various meanings by profilers. Moreover, criminal profilers may categorize forensic traces differently from judicial authorities;
- opinion should contain a detailed description of analytical methods used, including an indication, which parts and conclusions were formulated on the basis of the particular method. In addition, the opinion should contain information on the relevance, reliability and usefulness of the particular method, as applicable to criminal profiling;
- opinion should indicate, which "behavioural" or "psychological traces", or groups thereof, gave a basis for the identification of the particular characteristics of the offender;
- opinion should include an attempt to determine the probability of occurrence of individual characteristics.

In order to conduct a proper evaluation of this kind of opinion, it is important that the judicial authorities possess at least basic knowledge of the processes of constructing criminal profiles. Furthermore, the evaluation is difficult, since, on the one hand, there is a widespread belief in the effectiveness of profiling, or even fascination with this tool, whereas on the other hand, profiling is characterized by dubious scientific basis, methodological and conceptual chaos. The chaos is even greater because in Polish practice, expert profilers use eclectic models combining selected elements of many different methodologies, including combinations of methods considered scientific and non-scientific. For example, in the model adopted by the Institute of Forensic Research, profiling is assigned to the field of investigative psychology, developed by Canter, representing the so-called scientific profiling, based on statistical methods. At the same time, the IFR staff use algorithms and typology developed by FBI agents (intuitive approach), admixed with domestic theories, based on research conducted by Gierowski (Szaszkiewicz, 2002; Kała, Wilk, Wójcikiewicz 2017). In contrast, Gołębiowski i Piotrowicz rely mainly on the Turvey method, additionally supporting their statements with the views of the associates of Canter (Piotrowicz, 2011), Douglas, Burgess, Ressler and R and S. Holmes (Gołębiowski, 2017). The whole situation is obscured by the fact that numerous scientific publications cite positive opinions about criminal profiling, which, although unjustified, create an impression of this method being widely used and accepted (Kowalewska-Borys, Kuklo 2015).

Profiling seems to be a very rewarding and exciting issue; seemingly quite simple and logical. The reasoning behind profiling can be described in the following way: each person is one of a kind and, therefore, has individual characteristics, reflecting his/her behaviour; our behaviour leaves traces in the environment, and, consequently also at the scene of the event; traces can be revealed, secured, interpreted and used to reconstruct the behavior; the behaviour can be matched with the personality; the perpetrator can be identified based on the personality. Consequently, the public is convinced by the supporters of this tool that effective profiling methodologies have been developed that allow to formulate conclusions on the basis of "behavioural traces", "psychological traces" and "personality imprints" left at the scene of the event.

However, when considering every single element of criminal profiling, one could come to the conclusion that although its assumptions sound reasonable, they have not yet been proven beyond doubt (Muller, 2000; Olszak-Häußler, 2014; Hicks, Sales 2015). First of all, none of the methods, including the ones referred to as scientific, e.g. investigative psychology, give an answer to the basic question: how to identify the perpetrator's characteristics on the basis of traces revealed at the crime scene? Therefore, once a judicial authority receives a criminal profile from an expert, e.g. containing information about completing military service by the offender, the grounds should be inferred, on which the expert's claim was based.

As reported in the literature, a profiler, depending on the method used and own beliefs, can base his conclusions on different grounds (e.g. the offender left an element of military equipment at the scene; the perpetrator used military equipment as a tool to commit a crime; the perpetrator used a technique taught in the military; according to a particular criminal typology, this type of offence is typical of soldiers; criminological studies have shown that certain criminal behavior is characteristic of soldiers, etc.).

It seems that the latter two grounds belong to the domain of an expert investigative psychologist. Subsequently, the judicial authority should pose the following questions: how reliable are the typologies and analysis results relied on by the expert?; how strong are the indications that the perpetrator was a soldier? and, does this knowledge allow to determine the circumstances that are relevant for the resolution of the case? In most cases, the traces and circumstances of the offence will only allow to formulate the conclusion that the perpetrator could potentially be a soldier.

Such a hypothesis could prove valuable in terms of developing forensic profiles and planning investigative activities, aimed at finding evidence confirming or excluding the responsibility of a given person. Hence, it will be helpful in pinpointing the offender. However, if the accused turns out to be a soldier, it will be difficult to prove his responsibility for the offence on this basis alone, since the offender could well be a civilian. Furthermore, even establishing beyond reasonable doubt that the offender was a soldier, does not prove that the suspected soldier is indeed the offender.

This article merely touches upon the issue of a profiler acting as an expert, since the detailed discussion on this subject is beyond its scope. As can be seen from the abovementioned examples, despite being a seemingly simple technique, profiling is in fact extremely complicated. Every aspect of criminal profiling requires numerous side digressions to be made, without which it would be impossible to understand the real nature and to find a suitable application for this tool.

Based on the content of the present article, it can be concluded that, with regard to the role of a profiler as an expert, there are more questions than answers. The current state of knowledge does not allow to determine unequivocally whether the profiler needs special knowledge, nor what should be the scope of such knowledge. Moreover, it cannot be clearly determined, whether the profile provides information of relevance to the resolution of the case. However, there is no doubt that wherever criminal profile takes the form of an expert opinion, it should be subject to very careful control, in accordance with the provisions of the Code of Criminal Procedure and doctrine recommendations regarding this matter.

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