

THE EVOLUTION OF THE INVESTIGATION PROCESS IN THE ACCUSATORY CRIMINAL PROCESS

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ABSTRACT

The investigation of crimes in the Mexican system since its implementation was thought of as a solution to the procedural violations that were experienced daily in the investigation and criminal processes in the inquisitorial system, for this reason it was determined as a technical-scientific process and where through the reforms to the constitutional framework, the proposed objectives would be achieved, with a body of trained police officers who knew the protocols of action from the very moment of the criminal news until the objects of the crime were made available to the prosecutor of the MP, and in this cases of the detainee when it was flagrant crime, in addition that the processing of the place of the facts be carried out with scientific precision by the criminal experts with the purpose of obtaining evidence data and means of proof of quality but above all obtained complying with the legal and technical framework.

KEYWORDS: First responder, Police investigation, Criminal process, Criminal experts, Crime scene processing.

1.- Introduction

The present work aims to know the protocols and laws that must be applied from the moment a criminal news is known and the investigation begins by the first respondent, a documentary analysis will be carried out on the determinations from the constitutional framework to the use of the protocols of action of the first responders, experts and prosecutor of the MP, where it allows through the use of the qualitative method with linguistic-semiotic base, where through the analysis and observation of various laws and manuals, we can reach conclusions about the development of the functions of the first responders in the intervention of a crime scene, as well as the way in which the criminal and forensic experts develop their work, In accordance with the provisions of the action protocols and the law of the matter attached to the constitutional framework, among which are:

- (a) Protocol for ministerial investigation and guidelines contained in the protocol for ministerial, police and expert investigation with a gender perspective on sexual violence.
- (b) Approved protocol for the search for disappeared persons and the investigation of the crime of enforced disappearance
- (c) Protocol of Ministerial, Police and Expert Investigation with a Gender Perspective for the Crime of Femicide in the State of Tabasco
- (d) Protocol for ministerial, police and gender-sensitive forensic investigation of sexual violence
- (e) First respondent. National Protocol of Action
- f) Extract of the updated first responder action protocol
- (g) Protocol of the State of Tabasco

These are just a small sample of the many protocols that are used to carry out investigations of facts of a possible criminal nature

2.- Background of the police investigation.

The Accusatory Criminal System influences the Police Investigation of the First Responder in Mexico today. As has been pointed out on countless occasions, it begins with the reforms approved and

promulgated in the DOF on June 18, 2008 where the (CPEUM, articles 16, 17, 18, 19, 20, 21 and 22, fractions XXI and XXIII, 73 fraction VII, 115 and 123 fraction XIII section B) are reformed.

When the Mexican State, derived from criticism of the mixed inquisitorial system and the constant resolutions issued by the SCJN for procedural violations and human rights violations that occurred within criminal proceedings, mainly from the investigation of criminal acts, where certain acts of torture were resorted to to obtain the confessions of the probable perpetrators, chose to generate a new legal framework for Mexican Criminal Procedural Law within the framework of the aforementioned reforms, which we saw materialized in 2008 in this regard, GARCÍA RAMÍREZ mentions in his work [...]" Some of its promoters suggested that the adoption of these novelties would allow to successfully confront the criminal wave that overwhelmed our country and eradicate, once and for all, the prevailing inquisitorial procedural regime ..." , which in theory would put an end to these practices, although in reality it has led to a whole process of change of mentality in the investigating police and some prosecutors of the MP, since the complaints have continued to exist until a couple of years ago.

However; to date, crime rates have increased, as indicated by studies by the (INEGI) where it is clearly established that in the face of the growing increase in crime in Mexico ... The trend of the homicide rate at the national level presents two moments: 1) from 1990 to 2007, which corresponds to the stage of sustained decrease in the national homicide rate, and 2) from 2008 to 2017, when there was a continuous increase in the phenomenon in the country. These periods provide the guideline for analyzing the characteristics of the geographical distribution of homicides.

In addition to the results that the sentences of the SCJN yielded in that period, with which it was intended, that with the entry into force of the Accusatory Criminal System (FLORES SÁNCHEZ, 2022), through the reform to the CPEUM, where the changes made to the constitutional framework in procedural criminal matters were established, in order to reduce the criminal incidence and make criminal proceedings transparent.

The subject of research corresponds to the analysis of the existing problems in the development of the police investigation in Mexico (understood as this, from the criminal news to the processing of the place of the events and, where appropriate, made available to the detainee or detainees) from the reform of the Mexican penal system, before the reform and in view of the lack of respect for due

process and the systematic violation of human rights, which although it is true we can point out that these were not incorporated in their entirety in 2008 when the reform of the Mexican Penal System was carried out, to the (CPEUM article 1) where in this regard it prescribes "In the United Mexican States all persons shall enjoy the human rights recognized in this Constitution and in the International Treaties to which the Mexican State is a party, as well as the guarantees for its protection... [.]", however at that time there was only the protection of individual guarantees, the same constitutional point reformed until June 10, 2011, where the term of individual guarantees is changed to Constitutional Guarantees or fundamental rights and human rights are incorporated into constitutional rank.

The Mexican State has signed International Treaties both of the Block of Universal Rights, and of the so-called Inter-American Bloc, where in the case of the latter; Mexico has two judgments of the Inter-American Court for serious violations of due process in the inquisitorial system, among which are those already cited by various theorists for information and illustrative purposes and by lawyers applying for illustration purposes to the competent authority of criminal proceedings (in its various procedural stages), which date back to the case of Digna Ochoa and relatives against Mexico, "Facts I. C. Investigations and proceedings initiated following the death of Mrs. Digna Ochoa On October 19, 2001, the Public Prosecutor's Office received a telephone call reporting the discovery of the body of Mrs. Digna Ochoa, giving rise to the beginning of the preliminary investigation FDCUAUHT/03/USD04/02576/2001-10 ("the AP-2576"). In relation to the death of Digna Ochoa, the Special Prosecutor's Office proposed three main lines of investigation: (i) a line on possible military authorship, (ii) the so-called "Guerrero" line and (iii) the line on the family, social and work environment. None of these three lines of research yielded results. In view of the foregoing, on 18 July 2003, the Public Prosecutor in charge of the investigation proposed to the Coordination of Public Prosecutors (hereinafter referred to as "the CAMP") that criminal proceedings should not be brought after an analysis of the body of evidence, adopting the respective Resolution Agreement of AP-2576. The aforementioned Agreement ruled out the hypothesis of homicide and leaned towards the most likely hypothesis being that of a "disguised suicide".

As we can see in the preceding paragraph, the investigations that were carried out in the inquisitorial system did not respect the legality of the process, nor the scientific rigor in the ministerial investigation, concluding the matters without deepening the investigation. This and other judgments

issued by the IACHR, where one of the measures imposed were those of guarantees of non-repetition as one of the forms of reparation of damages that the Court imposed on the Mexican State MORALES SÁNCHEZ (Julieta, 2022), refers that the guarantees of non-repetition establish that "... They are "those measures judicially ordered to a State whose content is aimed at directly eliminating a structural deficiency of the national system that is allowing or favoring repeated violations of human rights." Therefore, Mexico carried out various constitutional reforms to eradicate the flawed processes that occurred in the Criminal Proceedings of the inquisitorial system, which began with the reforms of 2008 and continued to be fulfilled until 2011 with the incorporation of human rights into constitutional rank since the modification of Article 1 of the Constitution.

As for the measures that the State should have taken, there is the creation of all kinds of protocols that allow the accusatory system as a goal, that the processes from the moment of knowledge of the criminal news are based on protocols of action and scientific methods and techniques that do not leave the crime unpunished, that the guilty party be punished and that the damages be repaired CPEUM, art. 20 Section A, section I (CPEUM, 2022) .

Once the reform was completed, the other phase consisted of establishing the regulatory and protocol guidelines of the operators of the penal system, special emphasis should be placed on the preparation of police, prosecutors, judges, magistrates of both the common and federal jurisdiction. Although it is true, at the beginning of the reform each state had a (CPPA, 2012), later and before the need to standardize the processes in order that the trainings were uniform to avoid the initiation of a system with violations of due process.

The (CNPP, 2022), establishes from the Principle that governs the process, through the interveners, the criminal investigation, the exits and alternative means, forms of early termination of the process, etc., to the techniques of the criminal process, the closure of the oral trial process and the process of execution of sentences, however, the regulatory and protocol stage of the procedural actions were carried out by each state, and it is in this normative process where each state began to implement the operation manuals according to its expectations and regionalizing its performance, and although there is a CNPP, if we analyze each of the action protocols of the various Prosecutor's Offices they have certain unified criteria, however, there are in some cases marked differences in the implementation of the accusatory criminal process.

3.- The police who can act as first responders.

The (LGSNSP, 2022) (in fine, art. 2) [...] "as well as the investigation and prosecution of crimes ...", which as can be seen in the first article of the aforementioned law, this is a regulation of article 21 of the Constitution, therefore continues to have as the axis of the investigation the functions granted to the MP and where the police must always act under their leadership and command.

In the applicable constitutional and legal framework, we find that article 21, eighth paragraph (CPEUM, 2022) states "[...] Public security includes the prevention, investigation and prosecution of crimes, as well as the punishment of administrative offences, under the terms of the law, in the respective competences indicated in this Constitution. ...", as can be seen in the constitutional text, the functions of Public Security are established through the federal police as well as those of the federal entities and the municipalities, assigning to it the prevention, investigation and prosecution of crimes, at first glance it would seem that the police have autonomous functions in terms of the items mentioned in the immediately preceding line, However, when analyzing the general context of article 21 of the Constitution, we have that in the first paragraph it is established that "the investigation of crimes corresponds to the Public Prosecutor's Office and the police, which will act under the direction and command of the former, in the exercise of this function", then then, the investigations carried out by the operational police in their various areas, they must always be under the direction and command of the Public Prosecutor's Office.

While it is true, when acting in the prevention of crime they do not require the leadership or command of the MP, when acting as first responder, it must be in accordance with the constitutional mandate.

The National Guard, in accordance with the provisions of the (LGN, Art. 9, section VIII), establishes among its functions "To carry out, under the leadership and command of the Public Prosecutor's Office, the investigations of the crimes committed, as well as the actions instructed by that or the jurisdictional authority, in accordance with the applicable regulations". Here we can observe that although it is true that the competence of the national guard is federal, it is also empowered according to the agreements that for this purpose are concluded with the states and municipalities, for the case at hand the collaboration is carried out with the states to be able to attend the calls to act as first responders as already expressed in previous lines.

The agreement of the (CNSP) where ten indicators are established for the fulfillment of these agreements where in the core the focal points of interest for the present work are: 1. Evaluation of permanence ..., 2. The update in the Penal System, 3. Police training academies or institutes, 4. Special Operations Units, Cyber Police and Procedural Police.

Since the entry into force of the Accusatory Criminal System, training cycles have been established for all operators of the system, as a result of which evaluations of permanence in police corporations were initiated, as a result of which we have that to date, although it is true that the police have received various training, it is no less true that there is still a long way to go in this and other areas concerning police work.

With regard to the Criminal System, since its entry into force (2008), various laws, regulations, manuals and protocols of action have been created with the intention of duly regulating the accusatory process from the investigation before the complaint or complaint of a fact that the law indicates as a crime, until the total conclusion of the process either in an acquittal of the accused or a conviction with which the process extends to the Stage of execution of sentence.

Article 4 of the (LESPET, 2022) establishes the purpose of the competence of Public Security, however, in neither of the two points that touches on the investigation of crimes, does it refer as it should by constitutional mandate the obligation for the police to be in command and conduct of the MP, but briefly cites "Collaborate in the investigation of crimes and prosecution of criminals at the request of the competent authority", leaving to the interpretation of the acting authority that collaboration and the way of carrying it out, a situation that puts at risk a performance of the police investigation from the moment it becomes aware of a criminal act or is notified of it.

There is the commitment of the federative entities, to create or strengthen the academies or institutes of police training, in this regard article 19, section VIII of the (LSPET, 2018) the State of Tabasco through the Security Council undertakes to promote the Police Career Service, the purpose is to have trained elements and at the same time that they create links of commitment and roots in the corporation, which will result in a commitment to the institution itself.

4.- Scientific police investigation

At present, the application of the protocols or the ignorance of the laws of the matter or, where appropriate, the lack of coordination between first responders and prosecutors causes the inadequate collection of evidence within the investigation folders, causing a serious problem in the parties of the process (victim or accused). In the processes of investigation and judicialization that result from the processing of the place of the facts, the link or the discovery, the investigation folder is generated, where any act of authority must be founded and motivated to have legal effect, according to the competences and powers of the person who issues it, in the specific case that arises on the observance of legality in the participation of the first respondents, For this, it is necessary to locate ourselves in the police action since the mandate of the Federal Constitution in its article 21 and therefore the entire legal framework of the matter.

This paper is focused on the study of the areas of Criminal Law, Accusatory Criminal Procedure, Police (in his intervention as first responder), Human Rights (rights that assist both the victim and the accused within the investigation), also addresses the importance of processing the place of the facts or the finding analyzing the scientific intervention of both the first responders and the criminal experts.

The line of investigation that we will address are the legal systems of the accusatory criminal process, the protocols of action of the various participants in the process of action of the first responders within the criminal investigation.

In order to know the development of the police forces since the entry into force of the accusatory criminal process (June 2008 to the present date), so that the existing theories regarding the criminal process, the criminalistic techniques that correspond to the scientific intervention of the police investigation, the proper use of investigation protocols of the first responders, chain of custody protocols and skills deployed in the filling out of the Approved Police Report and the making available to the person arrested in flagrante delicto CRUZ MARQUINA, 2021 which indicates in this regard that [...] [...], so that the investigative acts carried out must be directed by the latter and not by the discretion of the arresting police, since this would cause the delay of the disposition." [...], referring to the obligation of police officers to follow protocols in all respects in order not to leave acts that may be voidable or unlawful in the process.

In accordance with the knowledge of the legal instruments and manuals and regulations, both police and criminalistic, the performance of the first responders within the criminal investigation has rules that delimit their action from the text of our Magna Carta in its article 21 cited above and subsequently described in secondary laws, regulations and applicable protocols.

In order to know in depth the response capacity of the first responders from the moment of knowledge of a criminal news until the availability of the objects of the crime (indications and evidence) to the Prosecutor of the Public Prosecutor's Office, theoretical studies will be carried out that allow us to know the ideological currents that predominate in the criteria of action and surveys will be carried out to the participants in the investigation processes to know from their response capacity, coordination with the Public Prosecutor in charge of the investigation, knowledge of action protocols at all stages of the investigation.

The foregoing is of utmost importance because at the moment in which the Prosecutor of the MP breaks any of the legal precepts contained in article 129 of the (CNPP, 2022) that in its first paragraph establishes that "The investigation must be objective and refer to both the elements of charge and discharge and conducted with due diligence, in order to guarantee respect for the rights of the parties and due process", with the above we have that the investigation established in the law, must maintain objectivity and that is only achieved when from the first moment of acting in accordance with the law, leaving aside actions moved by subjective elements of the conduct of the individual who performs the first actions to obtain evidence that leads to the clarification of the facts. That is, in the accusatory process the purpose is that procedural equality is really reflected from the moment the evidence is collected.

5.- Current status of the police investigation in the criminal process

The changes fell mainly on all the agencies involved in procuring and dispensing justice, for this it was also necessary to reform the legal framework of police institutions; As for the traditional function of crime prevention, they begin to develop the function as first responders in the accusatory criminal process, which are delimited both at the constitutional level and by secondary laws and regulated in the Protocol of Coordination of the Public Prosecutor's Office and Police Institutions.

In view of the foregoing and given the development of the criminal proceedings followed to date, it is considered of vital importance to know the causes of the relevance of resources and revocation of

judicial determinations that are motivated by illegality of the collection of evidence, inadequate management of the chain of custody or deficient filling of the approved police report, since the beginning of the criminal news through the complaint or complaint and as indicated (BERGUER CAZADERO, 2022) where it addresses the issue of the development of the investigation and manifests [...], after receiving the criminal news, the Public Ministry, being the director of the investigation stage, may carry out the acts or investigative measures, that it deems relevant. That is, what is known as "the initial or preliminary investigative measures", which, by their nature and purpose, must be the most urgent and necessary, for a first analysis of the facts that are the subject of the lawsuit or complaint."

As is clear in the initial stage of the investigation, where the police (of any nature or corporation that comes as first responder), is in charge of the Prosecutor of the Public Prosecutor's Office, as already mentioned above, who is the one who directs the investigation, this is so, since although it is true that the police have some expertise in the area of investigation or prosecution of the place of the facts, no less true is that who is in charge of developing the theory of the case and going to court to carry out the process is the Prosecutor of the MP, therefore it is the one who knows the technicalities and the needs of procedural technical elements that must be fulfilled to carry out an investigation that is successful at the time of exposing the evidence data, the interviews and other expert reports that must be incorporated into the process to substantiate the accusation, request the link to the process or make the accusation by the prosecutor, and all this cannot be possible if there is a deficient investigation from the moment of the collection of the place of the facts.

The foregoing, because it depends on it to reach the formal truth that is the one that counts to clarify the criminal act, however, to reach it, it is necessary to observe from the police protocols of the first responders to verify a deep legal technical knowledge in the investigation stage; that is where the prosecutor of the Public Ministry will make the appropriate decisions to request the experts to carry out the pertinent studies on the evidence collected so that they become evidence data that support both the participation of the active subject in the facts and the place, day and time of the events can be corroborated, that fulfills the circumstances of manner, time and place, as of the fact that the accused in the criminal act can establish his due defense.

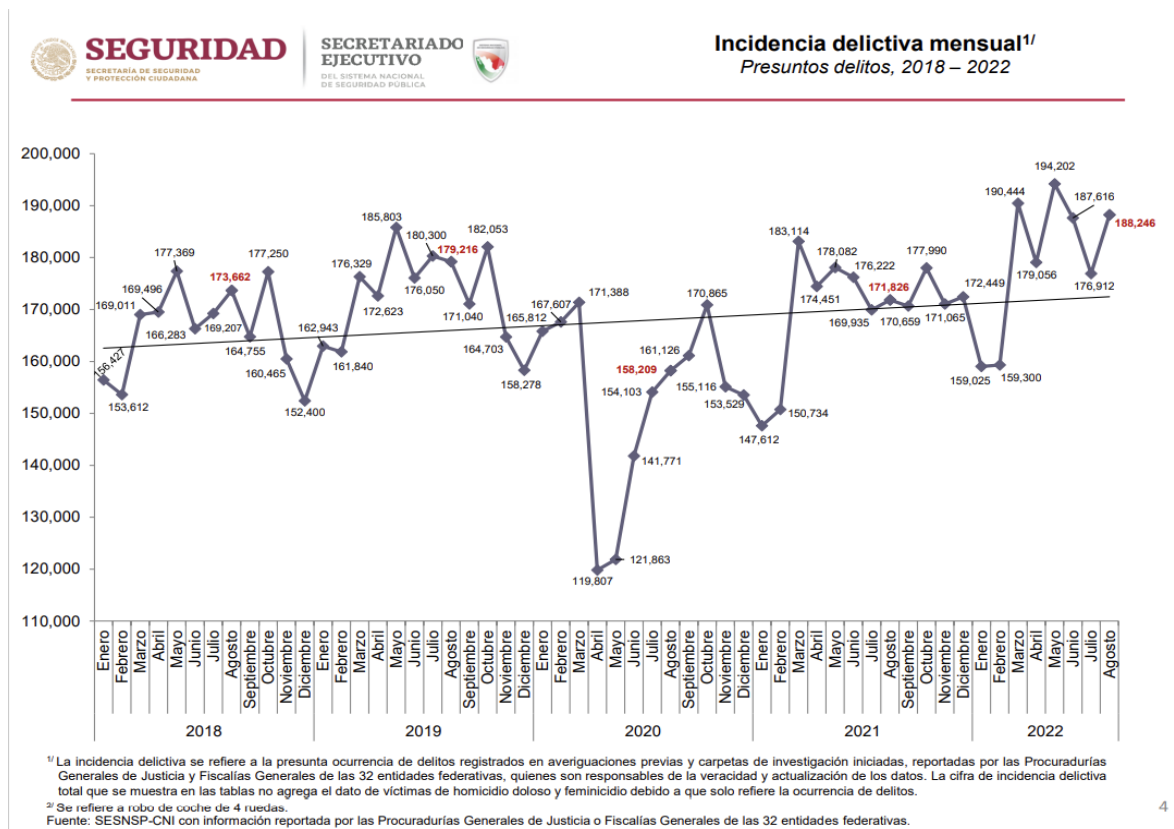
When we talk about the criminal process we have to refer to the theories raised by Carnelutti and cited by ALCALÁ-ZAMORA Y CASTILLO where he points out in his analysis to the procedural

figures that [...] "It turns out, then, that in principle, although in particular then its success depends on many other factors (judicial and political organization, ethical level of the forensic professions, efficiency of procedural legislation, etc.), the process is presented as the means that offers the greatest possibilities of providing the just and peaceful solution to the conflict" based on the above exposed by (ALCALÁ-ZAMORA Y CASTILLO, 2018) It is important to highlight that while it is true that these points are of paramount importance, the success of a process is based on emphasizing the initial investigation, especially within a process where the protocols, methods and techniques used in this process are fundamental to advance to the next stage, such as the stage of initial hearings within the criminal process and have evidence and means of solid evidence to support the theory of the case and if necessary to reach a sentence before the legal impossibility or by will of the parties not to reach a reparatory agreement, conditional suspension or even within an abbreviated procedure.

In order to determine the competence and protocols that must be applied by the first responders (CRUZ MARQUINA, 2021) we will analyze the manuals, protocols and competency rules on the collection of evidence, packaging and making available to them in order to obtain reliable test data that have legal effects within the initial and subsequent hearings, we have that in the transitory eleventh of the CNPP, and numerals 259 and 261 of the same legal order, where various obligations of public servants who exercise the police function are indicated, and given the obligations they entail (PLASCENCIA VILLANUEVA R. , 2017) to know of the above the author indicates that [...] "A prepared police force is required to act as a first responder to the scene of a criminal act" this means that the police that performs first responder functions must be a person prepared not only in knowledge of the laws and protocols of action, but also must know investigation techniques, following Plascencia, establishes that this, "has specialized capabilities to process the place of the events or findings, as well as the data or elements of evidence (means, indications or evidence) that are located in it, thus initiating the chain of custody."

Continuing with the observations made by (PLASCENCIA VILLANUEVA R., 2017), it establishes that [...], "its action can not only constitute the first contact of an authority to prosecute crime, but also to provide assistance and protection to victims and simultaneously initiate the investigation." From the previous premises we have, that the action of the first respondent has many more responsibilities than being constituted in the place of the facts and protect the area where the criminal act was committed, so that although a decade has passed, we can observe that all kinds of mistakes

continue to be made when going to a call of a criminal news, so it is important to know the causes that still do not allow the accusatory criminal system to yield the expected results, since high-level crimes have not been inhibited, but on the contrary they are on the rise as we can see according to the statistics provided by the Secretariat of the SNSP for the period 2018-2022, as shown in the attached table.



7. Background of the Accusatory Criminal System in the investigation of the criminal expert.

As mentioned above, with the change from the mixed system to the accusatory system, the intervention of the expert is supposed to be of scientific quality in the processing of the scene of the facts and the analysis of the objects of the crime (indications), that is why; So it is necessary to take a look from the way in which the services of an expert are summoned to their performance in the field.

In the mixed system, the experts carried out the expert reports many times without the necessary technical rigor, since one of the causes that led to the reform of the penal system were precisely the

abuses that were committed in the investigation and the results of the expert reports, which in the case of the investigations given the public faith that the Public Prosecutor had, (Code of Criminal Procedure), everything contained in the file practically became full evidence, so it was almost unnecessary to strictly adhere to the protocols of the case [although that was not generalized, since there were also professional public servants in each of their areas of competence].

In this regard we find in various protocols that were developed in order to obtain excellent results, in the processes carried out from the moment the criminal news is known until the investigation folder is integrated, for this we have that in the State of Colima there is such an instrument (SANTANA MONTES, Marcos, Attorney General of the State, 2015), where the general objective establishes "Define, the functions and competences that within the accusatory criminal procedure perform the Police Institutions and the Public Prosecutor's Office, particularly in relation to detention in cases of flagrante delicto, the preservation, processing and transfer of evidence,...", attentive to the above, we have that emphasis is made, using the word "particularly" citing the preservation of the place of intervention, Processing and transfer of evidence, since as the central axis of criminal proceedings, the investigation must be carefully observed from the moment of the criminal news must carefully observe these steps to achieve the effectiveness of the investigation.

6.- Criminal experts in the accusatory criminal process.

Within the functions and competences by profiles, we have that the experts are responsible for "issuing technical-scientific opinions regarding the evidence/material elements of evidence and going to trial to testify before the Court of Prosecution on the results and conclusions obtained as a result of the expertise carried out during the investigation". Based on the above, we have that the expert opinions must be technical-scientific, and must be mandatory since, in addition to being in the law of the matter, it is established in the protocols expressly carried out for expert action.

We find the definition of expert in the MP-Police coordination protocol, which establishes "Professional or expert technician who prepares studies or criminalistic, forensic analysis of various specialties, on people, objects, or facts, in order to issue technical-scientific conclusions within the investigation, in coordination with the Police and under the leadership of the Public Ministry. He goes to court to hear before the trial court the results and conclusions obtained as a result of the expertise carried out during the investigation." In the analysis of the previous text we have that there are several

requirements that a criminal expert must meet, as the first point we have to carry out studies or criminalistic and forensic analysis, which places in two different fields the experts "the work that is carried out in the field (place of the facts) and the work that is carried out in the laboratory for which in both cases you must follow the appropriate method and technique, depending on the discipline of the expert".

In another context we have that from the results obtained the expert must make conclusions (criminalistic or forensic) in such a way that they give total clarity to the fact that is intended to prove or the object or person on whom an expert is carried out.

Finally, but of transcendental importance, it is necessary to participate as a witness to vent before the trial court his opinion since it conforms to what is established (CNPP, art. 272) in the final part [...]" The written opinion does not exempt the expert from the duty to attend to testify at the trial hearing", because of the above, the expert must be an expert in the field since he must explain to the judge and the concurrence (parties) the content and results of the same, clearly describing the method and technique used to be able to arrive at the result exhibited in his opinion.

7.- Conclusions

This paper shows the correlation that must exist between the participants in the initial investigation from the moment of knowledge of the criminal news, and the importance of these interveners (police and experts), maintain close coordination with the prosecutor of the MP, to carry out an investigation that covers the necessary requirements to convert the evidence into evidence data and means of proof that are useful to the process, It is understood that although it is true that the police and experts have the capacity to carry out their work according to their expertise and following the protocols of action, it is no less true that who conducts the investigation is the prosecutor of the MP and who knows the technical requirements that need for a matter to have a favorable conclusion, In other words, it is who can based on the report of the first responders notified first-hand to the prosecutor who can request in that act that they look specifically for such or such elements that allow integrating the indicia, evidence or means of proof necessary to formulate and adequately defend their theory of the case, as well as it can incorporate elements that are useful to the defense, presenting the integration of the folder according to the constitutional and legal principles to which public servants who act from the investigation stage to the conclusion of the case are obliged by law.

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