



E31 Relevant, Reliable, and Valid Forensic Science in Continental Europe Criminal Justice Systems

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After attending this presentation, attendees will understand how legal systems from Continental Europe appraise the relevance, validity, and reliability of forensic evidence. The basic differences between inquisitorial and accusatorial criminal systems will be outlined and the position and role of scientific experts in European criminal procedures will be discussed. Finally, the consequences in terms of procedural rights of the accused will be debated.

This presentation will impact the forensic science community by raising awareness of the similarities between inquisitorial and accusatorial criminal justice systems when scientific evidence is assessed. In fact, it is often postulated in the Anglo-American scientific and legal literature that the appointment of scientific experts by the courts (as in inquisitorial systems) could solve many problems encountered when expert witnesses are hired by parties. It will be shown that such is not always the case and that inquisitorial procedures raise their own set of problems when scientific evidence is to be evaluated.

Contemporary European legal systems are familiar with the principle of freedom of evidence, meaning that a court may consider any type of evidence to establish the facts. There is; however, an exception to this rule: evidence cannot be considered when, despite its (hypothetical) reliability, it was adduced contrary to statutory provisions (for instance, searches without a valid warrant).

Contrary to American law, where admissibility is subject to fairly precise rules, the scientific admissibility of evidence is seldom addressed in European legal writings, and continental legal systems seem rather uncommunicative on the subject. The question of scientific reliability is seen as intrinsically linked with the assessment of the actual evidence, that is with the determination of its probative value. Magistrates are left to their own devices in taking these decisions, with the risk of disparate practices developing, of unreliable evidence being admitted, or new methods being rejected despite their reliability.

In practice the situation is unsystematically regulated, traditional types of evidence being admitted because they always have been (and because it is thought that their reliability has long been proven), while calls for expert testimony concerning “outlandish” subjects are rejected. In borderline cases, the judge will appoint the expert and decide as to the probative value of the expert testimony according to the intelligibility of the report and in the light of the other facts of the case.

Such “laissez-faire” attitude is justified in the legal literature by the structure of these legal systems, which, it is thought, set up enough formal and informal barriers to the admittance of invalid scientific evidence: the formal accreditation of experts, fact-finding being addressed by a professional judge instead of a lay jury and the duty to give reasons for decisions, are seen as adequate safeguards against the taking of unreliable and irrelevant evidence.

Yet, problems encountered by inquisitorial systems when assessing scientific evidence are numerous and often poorly addressed because the judicial community has great trust in its court-appointed scientific experts and lacks awareness as to the questions raised by such kind of evidence. It remains unanswered then whether inquisitorial systems can under such circumstances safeguard a defendant’s right to a fair trial.

Admissibility, Probative Value, Continental Europe