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CATEGORIES OF EXPERTS IN CRIMINAL PROCEEDINGS

Summary

An expert in criminal proceedings is an assistant to the trial authority. It provides special evidentiary information and assists the procedural authority conducting the proceedings at a given stage in resolving the case. In a small number of cases, the Code of Criminal Procedure indicates the specialty of experts to determine certain circumstances that require resolution in criminal proceedings. It defines procedural activities, the correct performance of which depends on the participation of an expert. The expert's opinion is a special, self-contained source of evidence, and the special knowledge of this participant in the criminal proceedings is necessary for its issuance.

In the article, the author leaned into the issue of the categories of experts appearing in the criminal process. He discussed the position of court experts, *ad hoc* experts, as well as expert witnesses and expert consultants. The paper also focused on the issue of the procedural standing of a scientific institution and a specialized institution. A significant part of the study is a consideration of the procedural position of private experts.

Keywords: Code of Criminal Procedure, expert, court expert, *ad hoc* expert, scientific institution, specialized institution, private expert

Introduction

The institution of an expert is an institution of procedural law provided for in the Code of Criminal Procedure.[1] in order to ensure the reliable functioning of the organs of the broader justice system and to ensure the competent performance by these organs of their statutory tasks. Courts or other procedural bodies reach for the opinion of an expert in situations where

[1] Law of June 6, 1997. - Code of Criminal Procedure, unified text. Journal of Laws 2024, item 37.

it is necessary to have special knowledge, and such knowledge is available to experts, and expert evidence cannot be replaced by another evidentiary act, such as hearing a witness[2]. Thus, the quintessential function of an expert is to present to the court or other public authority that conducts pre-trial proceedings special knowledge that is relevant to the determination of the case, that is, knowledge that may affect the content of the decision. Therefore, it is not necessary or even possible to appoint an expert or experts if special knowledge is needed to clarify circumstances that are of marginal importance for the resolution of the case[3].

In criminal proceedings, expert evidence should be referred to only when it is actually necessary[4], and the knowledge that an expert can provide cannot be substituted by the authority conducting this type of proceeding[5]. For the obligation to appoint an expert, in light of the procedural regulations, the knowledge of a member of the panel or an officer of the procedural body that conducts pre-trial proceedings is irrelevant, even if he unquestionably has the appropriate special knowledge that would allow him to independently determine the given circumstances, for example, due to additional education or his own extra-professional interests[6]. Addressing this issue, the Supreme Court aptly signaled that: „The knowledge of the court does not constitute evidence in the case, it only enables and facilitates the court to evaluate the opinion of the expert evidence. Even if the court had special knowledge, it is still obliged to use evidence in the form of an expert's opinion, so it cannot dispense with an expert's opinion if the determination of a fact requires special knowledge."[7]. The view indicated here was also expressed in another top court judicature, which stated: „From the generally accepted principle that the court is the supreme expert, it cannot be deduced that it can replace the expert, and this means that if special knowledge is needed to make findings relevant to the outcome of the case, the court cannot make them on its own, even if it were qualified in this field on the merits; having such competence only facilitates the evaluation of the expert's opinion."[8].

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[2] Order of the Supreme Court of May 17, 2007, II KK 331/06, LEX No. 301131; judgment of the Supreme Court of November 24, 1999, I CKN 223/98, LEX No. 39411.

[3] P. Hofmanski, K. Zgryzek, E. Sadzik, *Kodeks postępowania karnego. Komentarz*, vol. I, C.H. Beck Publishers, Warsaw 2007, pp. 912-915.

[4] T. Widla, *Ocena dowodu z opinii biegłego*, University of Silesia Publishing House, Katowice 1992, p. 117.

[5] Judgment of the Supreme Court of June 19, 1980, I KR 118/80, unpublished.

[6] Supreme Court ruling of May 3, 1982, I KR 319/81, OSNPG 1982, no. 11, item 149.

[7] Judgment of the Supreme Court of March 2, 2017, II KK 358/16, LEX No. 2259785.

[8] Judgment of the Supreme Court of October 26, 2006, I CSK 166/06, LEX No. 209297.

In the case of expert evidence, the means of proof is the expert's opinion, and the source of proof is the special knowledge possessed by that participant in the criminal proceedings[9]. Expert opinion evidence is, after witness evidence, among the most commonly used in proceedings conducted under the regulations of the Code of Criminal Procedure. It is personal, named, insubstantial and indirect evidence. The importance of the expert for the achievement of the basic goals of the criminal process is pointed out by Czeslaw Klak, indicating that: „In the case referred to in Article 193 § 1 of the Code of Criminal Procedure, the appointment of an expert is the responsibility of the trial authority. [...] When the determination of a given circumstance requires special knowledge, the trial authority must consult a competent expert. Failure to appoint an expert in the indicated situation leads to a violation of Article 193 § 1 of the Code of Criminal Procedure. (if a psychiatric opinion is necessary - to the violation of Article 202 § 1 of the Code of Criminal Procedure. in conjunction with Article 193 § 1 of the Code of Criminal Procedure). [...] Failure to admit expert evidence when it is necessary to clarify the merits of the case is a gross misconduct that may affect the content of the decision (Article 523 § 1 of the Code of Criminal Procedure)."[10]. The court or other procedural body conducting legal proceedings can not dispense with the opinion of an expert when the determination of a fact requires special knowledge, nor can it reject the opinion of experts and adopt its own different position in a particular case, as this would be a determination of facts without the required evidence[11].

Definition of expert

The concept of an expert is not defined by any provision from the sphere of criminal procedure, nor has it been defined by the legislator in any of the non-Code normative acts that provide for the possibility of its appointment[12]. Article 193 § 1 of the Code of Criminal Procedure. merely indicates that if special knowledge is required in order to ascertain the circumstances that are significant for the resolution of the case, the opinion of an expert or experts shall be sought.

9 S. Waltoś, *Proces karny. Zarys systemu*, Wydawnictwo Prawnicze LexisNexis, Warsaw 2003, p. 354.

10 C. Klak, *Pełność", „jasność" i „niesprzeczność" jako kryteria oceny dowodu z opinii biegłego w polskim procesie karnym (art. 201 k.p.k.)*," Studia Prawnicze KUL 2012, no. 4, p. 48.

11 Ibid.

12 T. Tomaszewski, *Dowód z opinii biegłego w procesie kar*nym, Publishing House of the Institute of Forensic Expertise, Cracow 1998, p. 10; A. Kegel, Z. Kegel, *Przepisy o biegłych sądowych, tłumaczach i specjalistach. Komentarz*, Zakamycze, Kraków 2004, pp. 14-28.

In the vernacular, an expert is referred to as an „expert or expert”[13], „an expert on a subject whose opinion is taken into account when making official decisions”[14], „a specialist in a particular field”[15]. According to the PWN dictionary, an expert is a specialist in a particular field, an expert, an expert who has a great deal of skill, experience in a certain field, an efficient, articulate person[16]. In the procedural literature, an expert, otherwise known as a court expert, an opinion writer, an assistant to the procedural body[17], is a person appointed by the procedural body to give an opinion in the field of special information in his possession, having the appropriate amount of expertise and experience; a person with special knowledge called upon by the body conducting the proceedings to examine and explain in his opinion the circumstances relevant to the decision, the knowledge of which requires special knowledge in the field of science, technology, profession, craftsmanship, etc.; a person with appropriate professional practice regarding the facts to be proved[18]. It is worth mentioning at this point the opinion of Ewa Kurek, who pointed out that: „The legislature is increasingly trying to keep pace with the changes taking place in the field of innovation, translating this into individual changes in administrative procedure, among other things. The legislator realizes that proper implementation of such provisions based on the knowledge and life experience of those with general education may prove difficult or even impossible. Therefore, it often introduces the requirement to use opinions and expert reports, which are prepared by qualified individuals with expertise in the field, often with the use of testing apparatus and using the methods in question.”[19]. The above thesis, although formulated for the purposes of administrative proceedings, is applicable to all legal proceedings in which expert participation is possible.

According to Stefan Kalinowski, an expert is a person summoned by an authorized procedural body to examine or observe certain circumstances, the knowledge or observation of which and the evaluation or explanation of which require special knowledge, and to give his opinion after the ob-

[13] E. Sobol (ed.), *Mały słownik języka polskiego*, PWN Scientific Publishers, Warsaw 2000, p. 51.
[14] B. Dunaj (ed.), *Słownik współczesnego języka polskiego*, PWN Scientific Publishers, Warsaw 1996, p. 58.
[15] E. Sobol (ed.), *Słownik 1000 potrzebnych słów*, PWN Scientific Publishers, Warsaw 2000, p. 51.
[16] M. Szymczak (ed.),Slownik *języka polskiego*, vol. I, Wydawnictwo Naukowe PWN, Warsaw 1978, p.160.
[17] K. Piasecki, *System dowodów i postępowanie dowodowe w sprawach cywilnych*, LexisNexis, Warsaw 2010, p. 196.
[18] A. Kegel. Z. Kegel, op. cit., p. 30.
[19] E. Kurek, *Expert witness in administrative proceedings*, „Legal Knowledge” 2001, no. 3, p. 1.

servation or examination. An expert is also a person who, under the same conditions, is called upon to give an expert opinion without first investigating the facts[20]. In turn, Stanislaw Sliwinski notes that by experts is meant: „persons summoned in criminal proceedings in order to perceive certain facts, the knowledge of which requires special knowledge (in the field of science, art, craftsmanship, etc.) and to express their opinion about these facts, or at least to express some professional opinion „in abstracto", needed in a given trial, without knowing and examining the specific circumstances of the case."[21]. Tadeusz Tomaszewski, referring to this issue, pointed out that an expert is: „a person who has special knowledge and who is summoned by an order by the trial authority to investigate and clarify the circumstances relevant to the determination of the case"[22]. Robert Kędziora, on the other hand, defined an expert as: „a person, not interested in the outcome of the case, who can provide the public administration body with expert information and knowledge for the determination and evaluation of the facts of the case, thus facilitating the proper assessment of the facts and the issuance of a decision."[23]. Malgorzata Szalewska and M. Masternak separate the concept of an expert into formal and substantive approaches. As they expose, an expert in the procedural sense is an individual with special knowledge in a particular field appointed by the court or the authority conducting a particular legal proceeding, by order, to participate in the proceedings, in order to give an opinion on the facts of the case, which are related to the expertise. An expert in substantive legal terms, on the other hand, is a person or an organizational unit whose expert prerogatives derive from applicable laws[24].

In judicial decisions, we encounter a similar definition of this concept. In one of the judgments, the WSA in Lublin stated that: „An expert is otherwise known as an appraiser, an expert. An expert can therefore be any person who has special knowledge. Therefore, it does not have to be an expert registered in the relevant list maintained by a specific authority. Anyone

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[20] S. Kalinowski, M. Siewierski, *Kodeks postępowania karnego. Komentarz*, Wydawnictwo Prawnicze, Warsaw 1960, p. 153.

[21] S. Sliwinski, *Polski proces karny przed sądem powszechnym. Zasady ogólne*, Gebethner and Wolff, Warsaw 1948, p. 665.

[22] T. Tomaszewski, op. cit. p. 9.

[23] R. Kędziora, *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck Publishing House, Warsaw 2017, p. 597.

[24] M. Szalewska, M. Masternak, *Rola eksperta i jego opinii w postępowaniu administracyjnym*, in J. Niczyporuk (ed.), *Kodyfikacja postępowania administracyjnego: na 50-lecie KPA*, Wyższa Szkoła Przedsiębiorczości i Administracji, Lublin 2010, p. 797.

with specialized knowledge may be appointed as an expert in a case, unless a special provision indicates a specific category of persons."[25].

Summarizing the above considerations, it should be stated that the term „expert" includes a person who has special knowledge and who is appointed by an order of the court or other pre-trial procedural body to ascertain circumstances that are material to the determination of the case[26].

Crucial to becoming an expert in criminal proceedings is the act of appointment. This is because the entity is „included" in the pending proceedings as soon as it is appointed, which is done in the form prescribed by the procedural law[27]. The act of appointing an expert, which, as a rule, is an order (Article 94 and Article 194 of the Code of Criminal Procedure), is effective from the moment it is promulgated, when issued by a court, or signed, when issued by a pre-trial authority, until the conclusion of criminal proceedings. An expert may, of course, cease to perform his procedural function early, but he must be effectively relieved of this duty by the court or pre-trial authority, for which an act of dismissal is required, which will most often be an order revoking the order appointing the expert, or an order excluding him from participation in the case.

The expert is always an individual. Even when an opinion is issued by a scientific institution or specialized institution, the direct researcher and opinion maker is a specific expert or experts. As Tadeusz Hanausek points out, an expert may be a person who participates in an expert report prepared within an institute or establishment, a person included in the list of court experts, and any person with special knowledge in a particular field[28].

Court expert and *ad hoc* expert witness

Of great practical importance is the division of experts into so-called court experts and *ad hoc* experts. The procedural law does not make any formal distinction between the two categories of experts, and the opinions of either group of experts have the same evidentiary value[29].

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[25] Judgment of the WSA in Lublin of January 29, 2010, I SA/Lu 601/09, LEX No. 559483.

[26] Order of the Supreme Court of January 30, 2014, II KK 1/14, LEX No. 1427458; T. Tomaszewski, op. cit. p. 179.

[27] Judgment of the WSA in Opole dated December 4, 2013, I SA/Op 487/13, LEX No. 1404368.

[28] T. Hanausek, *Forensic expertise*, „Scientific Notebooks of the Academy of Internal Affairs," 1973, no. 1, pp. 92-93.

[29] T. Tomaszewski, op. cit. pp. 15-16; Supreme Court ruling of April 26, 2006, WA 15/06, OSNwSK 2006, no. 1, item 910.

The legal basis for the operation of court experts is the Ordinance of the Minister of Justice of January 24, 2005 on court experts[30], issued pursuant to the statutory delegation contained in Article 157 § 2 of the Law of July 27, 2001. - Law on the System of Common Courts[31]. Court experts are considered to be persons with special knowledge who have been included in the list of experts by the president of the competent district court. Entry in the list of experts involves the ennoblement of an expert who can use the title of court expert, with this title testifying not only to his specialized knowledge, but also to his relevant professional experience and such character traits as nobility, integrity, honesty, conscientiousness and impartiality conceived together[32]. The decision to appoint a court expert or to refuse to appoint an expert is made by the president of the district court, and is in the nature of an administrative decision.

The Ordinance on Court Experts stipulates (§ 12(1)) that a person who meets the following criteria may become a court expert: 1) enjoys full civil and civic rights; 2) is at least 25 years of age; 3) gives a guarantee of due performance of the duties of an expert; 4) has theoretical and practical special knowledge in the given field of science, technology, art, craftsmanship, as well as other skill for which he is to be appointed; 5) agrees to be appointed as an expert. A court expert is appointed for a term of 5 years, with the end of the term set at the end of the calendar year.

A forensic expert may not refuse to perform the activities belonging to his duties in the district of the court before which he is appointed, ordered by the court or the authority conducting pre-trial proceedings in criminal cases, except in cases specified in the provisions that regulate the proceedings before these authorities (§ 5 of the Ordinance). The establishment of an expert witness entitles, upon taking the oath, to give an opinion at the request of the court or pre-trial authority in the field of that branch of science, technology, art, craft, as well as other skills for which the establishment was made. As the Supreme Court rightly noted: „A court expert is only authorized to give an opinion on his specialty, but if the court intends to consult an expert in other fields, it should treat him as an *ad hoc* expert, not as an expert from the district court's list of experts. In such a situation, it is necessary not only to check - to the extent appropriate, by the court in a particular case - the expert's special knowledge in a manner that meets the formal requirements preceding entry on the list of experts, but also to take

[30] Journal of Laws 2005, No. 15, item 133.
[31] Uniform text Dz. U. of 2023, item 217.
[32] Judgment of the WSA in Warsaw of October 18, 2006, VI Sa/Wa/1553/06, LEX No. 264553.

a pledge from the expert. This is because the effects attached to becoming an expert witness apply only to that branch of science, technology, art, etc., in which special knowledge was the subject of examination before being enrolled as an expert - and, with regard to opinions in this field, allow the preparation of an expert report without receiving a separate pledge. However, they do not extend to cases where an opinion from another branch of science or technology is drawn up."[33]. When issuing an opinion, the expert then uses the title of court expert with the designation of the specialty and the district court in which he was appointed. Judicial jurisprudence allows for the appointment of expert witnesses at more than one district court in situations where this is justified in the interests of justice, as well as in the case of narrow specialties, if such an appointment is necessary in order to provide proper assistance to the judicial authorities[34].

The president of the district court shall dismiss an expert at his request (§ 6(1)(1) of the Ordinance), as well as when the expert has lost the conditions for performing this function or when it is established that at the time of his appointment he did not meet these conditions and still does not (§ 6(1)(2) of the Ordinance). The president of the district court may also dismiss an expert from his or her position for important reasons, and in particular if he or she performs his or her duties improperly, which, however, is not mandatory, even if such circumstances exist (§6(2) of the Ordinance). In this case, the president of the district court is obliged to hear the expert, unless it is impossible to do so (Section 6(3) of the Ordinance).

The Code of Criminal Procedure indicates that not only a court expert is required to act as an expert, but also any other person who is known to have adequate knowledge in a particular field (Article 195 of the Code of Criminal Procedure). This is confirmed by the jurisprudence, where the prevailing position presented in one of the judgments indicates that: „An expert may be any person with knowledge in this field, not necessarily included in the relevant lists of experts"[35]. Nor does the expert's opinion disqualify, per se, the lack of inclusion in the list of experts, resulting from removal from such a list due to age[36]. The status of *an ad hoc* expert is granted to any other person who is not included in the list of court experts, but who is known to have the relevant expertise in a particular field necessary to give an opinion in a particular case. These experts are appointed by the court or

[33] Order of the Supreme Court of April 14, 2021, CSKP 32/21, LEX No. 3219797.
[34] Judgment of the WSA in Warsaw of June 26, 2007, VI SA/Wa 1548/06, LEX No. 352767.
[35] Judgment of the WSA in Warsaw of August 26, 2009, III SA/Wa 114/09, LEX No. 527267.
[36] Order of the Supreme Court of November 15, 2002, II CK 488/03, LEX No. 589961.

pre-trial authority most often when the regular court experts do not have the expertise in a particular field that is necessary to resolve a particular case. It is reasonable that in selecting such a person, the trial authority appointing *an ad hoc* expert should take into account additional factors beyond the criterion of adequate knowledge in the field, such as, for example: the expert's professional experience, his ethical level, as well as organizational efficiency, access to the necessary testing equipment, etc.[37] When appointing *an ad hoc* expert in addition to the criterion indicated in Article 195 of the Code of Criminal Procedure. the trial authority should take into account the issues referred to in Article 196 of the Code of Criminal Procedure, which normalizes the reasons for excluding an expert, as well as § 12(1)(1), (2) and (4) of the Ordinance on Expert Witnesses, i.e. having full civil and civil rights, being at least 25 years of age and having a guarantee of due performance of the expert's duties. The concept of „warranty of due performance of the duties of an expert" is defined as the totality of qualities, events and circumstances concerning the person of an expert that make up his image as a person of public trust. It is clear that a final conviction for committing a crime authorizes the assumption that an expert does not meet the basic condition for performing this function - the guarantee of due performance of the duties of an expert[38]. On the other hand, there is no obstacle to appointing as *an ad hoc* expert a person previously removed from the list of court experts. The Procedural Law does not formulate such a prohibition. Nonetheless, it would be reasonable to decide to appoint such a person as an expert after first learning the reasons for removing him from the list of experts. Although such a person may have adequate knowledge in a particular field, he or she may not be able to properly perform the duties of an expert, because, for example, the reason for removal from the list of expert witnesses was negligence in the preparation of opinions or unjustifiably long time of their preparation. As the Supreme Court emphasized, *an ad hoc* expert may be any other impartial person with appropriate (comparable to those specified for court experts) qualifications.

The authority evaluating an expert's opinion is not entitled to value its content solely on the basis that it is not from an expert listed as an expert witness[39]. The court, as well as the pre-trial investigation authority, at its

[37] T. Tomaszewski, op. cit. p. 19.

[38] Judgment of the WSA in Warsaw of January 11, 2006, VI SA/Wa 1976/05, LEX No. 206569; judgment of the WSA in Warsaw of March 30, 2007, VI SA/Wa 119/07, LEX No. 335193.

[39] Judgment of the Supreme Court of February 5, 1974, III KR 371/73, OSNKW 1974, no. 6, item 117.

discretion, may appoint as experts both persons included in the list of court experts and other persons outside this list, if they have the appropriate professional and specialized qualifications in the field at issue in the case, with no objections to their impartiality. This is because the qualification as an expert is not determined by the fact that a person works or has worked in a certain position, but by his possession of knowledge and practical experience in a particular field[40]. The evidence of *an ad hoc* expert therefore has the same probative value as that of a permanent expert witness.

When discussing the issue of *ad hoc* experts, the problem of appointing police officers or other law enforcement agencies as experts of this kind arises, as dependents of the trial authorities. The issue was finally resolved by the Supreme Court, holding that: „A researcher and expert of the Department of Forensic Science of the Central Committee of the Ministry of the Interior who conducts research in the investigation and develops an opinion in a field requiring special knowledge may be called by the court to appear as an expert in the case"[41]. The Supreme Court was even more comprehensive in another of its judgments, stating that: „The view that it is inadmissible for a law enforcement officer to act as an expert or interpreter in a case, as long as he is qualified, cannot be considered valid. It would be clearly wrong to say that the mere fact that such a person holds a position in law enforcement causes a weakening of trust in impartiality."[42]

Expert opinion and expert consultant

The literature on the subject indicates that an expert may act in the proceedings as an expert opinion and as an expert consultant[43].

An expert witness is an expert who prepares an expert report that includes the activities of an expert examination and the issuance of an opinion based on it. The expert in this case is a separate source of evidence, and the opinion prepared by him is a means of proof. As an expert witness, the expert is independent in carrying out opinion activities, as well as in the choice of research methods.

A consultant expert, on the other hand, is an expert who does not perform research activities and does not give an opinion, and is therefore not

[40] Judgment of the Supreme Court of November 15, 2002, V CKN 1354/00, LEX No. 77046.
[41] Supreme Court ruling of April 4, 1978, OSNPG 1978, no. 11, item 123.
[42] Supreme Court judgment of May 26, 1980, I KR 83/80, OSNKW 1980, no. 9, item 78.
[43] P. Girdwoyń, *Expert opinion in criminal cases in the European legal system: perspectives of harmonization*, Association of Graduates of the Faculty of Law and Administration of UW, Warsaw 2011, p. 125 et seq.

a separate source of evidence. The role of such an expert is to participate in the evidentiary activities carried out by the court or pre-trial authority and provide assistance and guidance in the conduct of the evidentiary activity, as well as interpret the results obtained. A consultant expert is therefore an assistant to the trial authority. Evidentiary activities in which the participation of an expert consultant is permissible include: inspection of a corpse (Article 209, paragraphs 2 and 3 of the Code of Criminal Procedure), examination of the accused by expert psychologists or doctors (Article 215 of the Code of Criminal Procedure.), procedural experimentation (Article 211 of the Code of Criminal Procedure), an examination (Article 173 of the Code of Criminal Procedure), an inspection of the scene (Article 207 of the Code of Criminal Procedure), as well as interrogation (including, above all, its special forms referred to in Article 192 § 2 of the Code of Criminal Procedure. and Articles 185a, 185b of the Code of Criminal Procedure. and Article 185c § 4 of the Code of Criminal Procedure)[44]. However, the participation of an expert-consultant in evidentiary activities is not regulated by law. In the doctrine, one encounters the position that the activity of an expert consultant is voluntary, and it is possible to assume the formation of a civil law relationship (i.e., a contract of commission) between the procedural authority (in particular, the prosecutor) and the expert, in which the rules of consultation and the remuneration of the expert can be established[45]. Such a position, in my opinion, should be negated. Indeed, such an informal appointment of an expert raises significant legal questions, primarily regarding the violation of the secrecy of the proceedings by the procedural authority in connection with the release of materials from the case file to the expert. Moreover, acceptance of such a position will result in an expert who is, in fact, a private expert, acting on behalf of the trial authority. Much more convincing is the position according to which a consultant expert is formally appointed by the court or pre-trial authority to participate in a specific evidentiary act, if its performance requires special knowledge, and gives an oral opinion, which is fully permissible from the position of Article 193 § 1 and Article 200 § 1 of the Code of Criminal Procedure. Such an opinion should be recorded in the minutes of the procedural activity in which the consultant

[44] J. Dzierżanowska, in J. Dzierżanowska, J. Studzińska, *Biegli w postępowaniu sądowym cywilnym i karnym. Praktyczne omówienie regulacji z orzecznictwem*, Wolters Kluwer, Warsaw 2019, pp. 328-329.

[45] J. Wojtasik, *Konsultant w postępowaniu karnym*, Green Mountain District Prosecutor's Office website, http://www.zielona-gora.po.gov.pl/index.php?id=36&ida= 3895 (accessed 28.11.2023).

expert was appointed to participate[46]. The opinion of an expert consultant in the above-described procedural situation is subject to the same formal and substantive control (Article 201 of the Code of Criminal Procedure) as the opinion of an expert witness. There are also no procedural obstacles to the court or pre-trial authority questioning a consultant expert as an expert (Article 200 § 3 of the Code of Criminal Procedure). In such a scenario of a consultant expert's participation in a criminal trial, he or she will be subject to criminal liability for behavior criminalized by Articles 233 § 4 and 4a of the Criminal Code[47], and therefore for intentionally or unintentionally giving a false opinion, as well as being entitled to remuneration, in accordance with the regulations contained in Article 618f of the Criminal Procedure Code. and the Decree of the Minister of Justice of April 24, 2013 on determining the rates of remuneration of experts, flat-rate tariffs and the manner of documenting the expenses necessary for issuing opinions in criminal cases[48]. To such an expert, the trial authority will be able to apply the penalties of order referred to in Articles 285 and 287 of the Code of Criminal Procedure. The appointment of a consulting expert does not relieve the trial body from the obligation to carry out a specific evidentiary act, as such an expert plays an auxiliary role for the trial body; although he has the ability to provide advice and guidance, but it is the responsibility of the trial body to properly carry out the act and document its course. This was expressed by the Supreme Court, stating in one of its judgments that: „Inspection (Article 207 § 1 of the Code of Criminal Procedure) and experiment (Article 211 of the Code of Criminal Procedure) are procedural actions, carried out exclusively by the trial authority, which may summon an expert (Article 198 § 1 of the Code of Criminal Procedure) or a specialist (Article 205 § 1 of the Code of Criminal Procedure) to them."[49]. Admittedly, in the doctrine there was a call for the formal establishment of the institution of a consultant (normalizing it in the criminal procedure), that is, a person who provides the body conducting the proceedings with the necessary assistance in activities requiring specialized knowledge. However, this suggestion was not implemented[50].

It is also impossible not to mention here the consultants of the parties, in particular the consultants of the suspect (the accused) and his defense

[46] D. Wilk, *Biegły konsultant w procesie karnym*, „Prosecution and Law" 2019, no. 7-8, pp. 63-64.

[47] Law of June 6, 1997. - Criminal Code, unified text. Journal of Laws 2024, item 17.

[48] Uniform Journal of Laws text of 2017, item 2049, as amended.

[49] Judgment of the Supreme Court of October 3, 2006, IV KK 209/06, OSNKW 2006, no. 12, item 114.

[50] B. Skiba, *Wykorzystywanie opinii biegłych w sprawach o zbrodnicze podpalenia*, „Przegląd Pożarniczy" 1983, no. 6, p. 15.

counsel. Undoubtedly, such consultants increase the effectiveness of the defense[51], and in criminal proceedings they act as so-called private experts, which will be discussed further below.

Scientific institution and specialized institution

The Code of Criminal Procedure, as already indicated, also provides for the possibility of scientific or specialized institutions to issue opinions (Article 193 § 2 of the Code of Criminal Procedure). The opinion evidence of the entities mentioned here is read as a variation of expert opinion evidence. A corollary of the statement that evidence from the opinion of a scientific institution or specialized institution is a variation of expert evidence is the mandatory recognition that the institution itself is a type of expert. As a rule, the opinions of these entities should be sought in particularly complicated cases, when there is a need for research that requires the use of the latest scientific methods, which are not available to individual experts.

Evidence from the opinion of a scientific institution or specialized institution, as referred to in Articles 193 § 2 and 2a of the Code of Criminal Procedure, is carried out in those cases in which there is a need for the court or body conducting pre-trial proceedings to obtain special knowledge at the highest substantive level, or when the preparation of an opinion requires the use of the research apparatus available to a particular institution. The Process Law lacks a definition of a scientific institution and a specialized institution.

Scientific institutions are entities that conduct scientific activities, thus: 1) universities within the meaning of the provisions of the Act of July 20, 2018. - Law on Higher Education and Science[52]; 2) federations of higher education and science entities; 3) the Polish Academy of Sciences; 3) scientific institutes of the Polish Academy of Sciences; 4) research institutes - which, in the light of the Act of April 30, 2010 on research institutes[53] are legally, organizationally, economically and financially separate state organizational units conducting scientific research and development work aimed at their implementation and application in practice[54]. This category includes, but is not limited to: Central Mining Institute, Research Institute of Roads and

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[51] T. Grzegorczyk, *Obrońca w postępowaniu przygotowawczym*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1988, p. 199.

[52] Uniform text Journal of Laws of 2023, item 742, as amended.

[53] Uniform text Journal of Laws. of 2022, item 498, as amended.

[54] J. Widacki, *Instytucja naukowa lub specjalistyczna w rozumieniu art. 193 § 2 k.p.k.*, „Państwo i Prawo" 2013, no. 9, p. 46.

Bridges, Institute of Meteorology and Water Management, Communications Institute - National Research Institute, Oil and Gas Institute, Railway Institute; 5) international scientific institutes established on the basis of separate acts operating on the territory of the Republic of Poland; 6) Łukasiewicz Center and institutes operating within the Łukasiewicz Research Network (operating on the basis of the provisions of the Act of February 21, 2019. on the Łukasiewicz Research Network[55]; 7) the Polish Academy of Arts and Sciences; 8) other entities conducting mainly scientific activities on an independent and continuous basis.

A specialized institution, on the other hand, seems to be an institution that is not a scientific institution, but specializes in specific research in the field of special knowledge, necessary for a specific proceeding, which functions either as part of another entity, but with a specific organizational and technical separation, or as an independent entity, but in both cases, however, equipped with appropriate research apparatus with appropriate certificates and employing personnel with proper qualifications in the fields concerned, regardless, however, of the nature of this employment and the legal form of the institution itself[56]. Jan Widacki also recognized private business entities as specialized institutions, but after they meet the following conditions: 1) they must have their own specialized staff with competencies confirmed by the state authorities in the form of an appropriate degree or title in science, professional authorizations, etc.; 2) the tests are performed by these entities in their own laboratories with certificates provided for by the law; 3) the head of the entity, subject to doubts as to who it is in a situation where we are dealing with an entity that is a company, has an elementary preparation in forensic science, so that a competent person is appointed from among the employees to perform the expertise[57]. As the Administrative Court in Katowice noted: “A specialized institution is one whose business profile includes the performance of expertise, which has been confirmed by the relevant state authorities and is supervised by them on an ongoing basis. This allows private business entities to be counted as specialized institutions as well, as long as they have their own specialized staff with competencies confirmed by state authorities, perform tests in their own laboratories, which have been subjected to a certification procedure,

[55] Uniform text Journal of Laws of 2020, item 2098, as amended.

[56] Judgment of the Administrative Court in Katowice of June 7, 2017, II AKa 167/17, LEX No. 2343433.

[57] J. Widacki, op. cit. p. 46; Supreme Court decision of December 5, 2006, II K 196/06, OSNwSK 2006, no. 1, item 2351.

and the head of the entity has a background in forensic science to appoint a specific person to perform the opinion."[58]. Such institutions may include, for example, the forensic laboratories of provincial police headquarters, the Central Forensic Laboratory of the Police, the Tchaikovsky Institute of Forensic Expertise. Prof. Dr. Jan Sehn in Krakow, Forensic Laboratory of the Research and Training Center of the Polish Forensic Association[59].

Evidence from the opinion of a scientific institution or specialized institution may be admitted when the problem to be evaluated is so complex that it requires clarification by specialists with a very high degree of theoretical and practical training. Thus, aptly, addressing this issue, the Supreme Court noted that: „Opinions should be requested from a scientific institute when the problem to be evaluated by the court, due to its complexity, will require clarification by specialists with a particularly high degree of practical and theoretical training and when it will be necessary to use the latest results of scientific research or to perform complex laboratory tests."[60].

In a situation where a scientific or specialized institution has been appointed to give an opinion, the opinion is given by that entity, and not individually by an expert or experts. However, it is impossible to ignore the *fact* that it comes *de facto* from individual individuals (employees of these entities) and it is their knowledge that is used in its preparation[61]. The procedural rules require that the opinion include the data of all persons who participated in conducting the expertise (research) and issuing the opinion, together with an indication of the activities performed by each of them[62], as well as the full name and seat of the institution[63] (Article 200 § 2 of the Code of Criminal Procedure). In the case of such entities, the obligation to appoint persons with the appropriate qualifications to give an opinion rests

58 Judgment of the SA in Katowice of June 7, 2017, II AKa 167/17, LEX No. 2343433.

59 J. Dzierżanowska, op. cit. pp. 333-334.

60 Judgment of the Supreme Court of June 24, 1981, IV CR 215/81, OSPiKA 1982, no. 78, item 121.

61 Judgment of the SA in Warsaw of January 4, 2002, II AKz 779/01, OSA 2002, no. 8, item 63.

62 The opinion issued by such an entity should include both the names of the persons who conducted the research and issued the opinion, as well as their academic degrees and official positions, with an indication of the field of knowledge in which they are specialists - Supreme Court ruling of September 28, 1965, II PR 321/65, OSNPC 1966, No. 5, item 84. Persons involved in the research and issuance of such an opinion may later be summoned to a hearing or court session to submit an additional opinion on behalf of a scientific institution or specialized institution.

63 Order of the Supreme Court of November 3, 2010, II KK 118/10, LEX No. 688672.

with the head (director) of such an institution, and the expertise of a particular person is determined by the extent of his substantive competence[64].

Private experts (*quasi-experts*)

On the grounds of the issue under discussion, it is impossible not to mention the so-called quasi-experts, i.e. private experts preparing so-called private opinions (out-of-court expert reports), the presentation of which, on the grounds of the criminal trial, is an increasingly common procedural phenomenon. These opinions are part of the trial material and as such should be made available to the opposing party[65]. It should be noted that, as a rule, opinions of this kind are prepared by persons listed as experts in court, who also have professional-scientific and widely recognized authority, so that they contain special knowledge that may not be possessed by another expert appointed to give an opinion by the procedural authority[66]. Besides, there is no prohibition formulated by law that would prevent a person enrolled in the list of court experts from assuming the duties of a private expert on the basis of a commission agreement with a party to criminal proceedings. Undeniably, opinions of this kind in criminal proceedings can facilitate the arrival of objective truth, as well as the realization of the right to defense, being an instrument for the implementation of the principle of material truth and the adversarial nature of the proceedings[67]. However, unlike an opinion issued by a court-appointed or pre-trial expert, a private opinion is issued at the request of a party to the proceedings, and therefore on the basis of a civil law contract (contract of mandate) entered into by the party to the proceedings or its procedural representative (defense counsel or attorney). Thus, the person issuing such an opinion, despite, for example, being listed as an expert witness, should not use the status of „court expert." This is because, as a general rule, an expert witness may use this title only when preparing an opinion for a litigation body, and the rest of the time he is only a specialist in a particular field. The above, in particular, follows from § 15 of the Ordinance on Expert Witnesses. This issue has also been dealt with by

[64] Order of the Supreme Court of August 23, 2007, IV KK 222/07, OSNwSK 2007, no. 1, item 1864.

[65] Judgment of the Supreme Court of February 2, 2011, II CSK 323/10, LEX No. 738542.

[66] B.T. Bienkowska, *Opinia prywatnego biegłego w świetle nowelizacji kodeksu postępowania karnego ustawą z dnia 27 września 2013 r.*, in: B.T. Bienkowska (ed.), *Wokół gwarancji współczesnego procesu karnego. JKsięga jubileuszowa profesora Piotra Kruszyńskiego* Wolters Kluwer, Warsaw 2015, pp. 32-33.

[67] R. Kmiecik, *Kontrowersyjne unormowania w znowelizowanym kodeksie postępowania karnego*, „Prokuratura i Prawo" 2015, No. 1-2, p. 12.

the judicature, namely in one ruling it was stated that: „[...] the status of an expert witness authorizes the issuance of opinions at the request of a court or pre-trial authority in criminal cases. Thus, with respect to only these entities, an expert is allowed to use the title "court expert," along with the designation of the specialty and the provincial [district - M.J.'s note] court to which he was appointed. [...] it is highly likely that, in the conditions of competition between experts, a potential principal would choose an expert using the title of a forensic expert, even if he acted in the mistaken belief of the legal significance of such an opinion in the evidentiary proceedings before the court"[68].

A private expert is not a participant in criminal proceedings. Unlike an expert, he does not have the legitimacy to suggest to the body that conducts the proceedings to gather supplementary evidence or to point out deficiencies in the evidence gathered. If such conclusions are drawn from an expert report prepared by a private expert, they should be treated as an indication to the party filing a private opinion in the case to also file a request for additional evidence. The legislator did not stipulate a requirement to create a register of quasi-experts. There is also a lack of any legal regulations that list the conditions that must be met by a person who performs an opinion at the request of a party to criminal proceedings. A private expert does not have any procedural obligations, nor does he have any powers under the Procedural Act or any other legislation. A private expert may not participate in the conduct of a procedural action. Neither the court nor the pre-trial authority shall summon such an expert to participate in such an activity. A private expert is not required to familiarize himself with the files of the proceedings in order to give an opinion, nor is he entitled to the right of evidentiary initiative or protection under Article 197 § 2a of the Code of Criminal Procedure.

Unlike a court-appointed or pre-trial expert, a quasi-expert is not under a statutory obligation to prepare an opinion or perform it within the timeframe specified in the contract-order. Thus, he can decide on his own whether to accept or reject the order. It may also, under the terms of the concluded agreement, waive the preparation of the opinion. The provisions on punishments of order under Articles 285 and 287 of the Code of Criminal Procedure do not apply to this category of experts.

The definition of a private opinion for the purposes of criminal procedural law was formulated by Jaroslaw Zagrodnik, deriving that a private opinion

[68] Order of the Supreme Court of April 11, 1996, I PRN 30/96, OSNP 1997, no. 2, item 28.

is „an opinion prepared by an expert (specialist or expert), at the request of a participant in the criminal process, who is not the body conducting criminal proceedings, at a given stage of the process”[69]. On the other hand, according to Krzysztof Wozniewski, a private opinion is the result of the work of an expert who performs his expertise at the request of the parties, rather than at the request of a procedural body, hence its other terms, such as: extra-procedural, extrajudicial or expert opinion[70]. As Dariusz Kala emphasizes: „A private expert opinion obtained at the request of a party to criminal proceedings is not an expert opinion in the sense indicated in Article 193 of the Code of Criminal Procedure. in conjunction with Article 200 of the Code of Criminal Procedure, since its preparation was not preceded by a decision of the trial authority to admit expert opinion evidence (Article 194 points 1-3 of the Code of Criminal Procedure). Instead, it is a document in the criminal-procedural sense, as this term should be understood as any object from which a certain intellectual content is derived, regardless of the way it is recorded. the [...] Expert report [...] is a private document that should be read in the course of the proceedings pursuant to Article 393 § 3 of the Code of Criminal Procedure. and be subject, since the condition of Article 410 of the Code of Criminal Procedure has been met, to an evaluation in accordance with Article 7 of the Code of Criminal Procedure. Failure of the court to evaluate private expert evidence (violation of Article 7 of the Code of Criminal Procedure in conjunction with Article 410 of the Code of Criminal Procedure) or to evaluate it contrary to Article 7 of the Code of Criminal Procedure. (for example, failure to analyze the content of the expert report in relation to the expert’s opinion) can lead to erroneous findings of fact. This, in turn, gives a party the right to bring an appeal challenging the findings of fact made in the case on the grounds of error of absence or error of arbitrariness”[71]. In turn, according to Christopher Eichstaedt: „The existence of a ‚private opinion’, which, if attached to the file, becomes a document in the case, makes it necessary for the court to explicitly address it in terms of the existing opinion already prepared by

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[69] J. Zagrodnik, *Opinia prywatna w procesie karnym*, in: M. Nowak, M. Golec (eds.), *Dowody w procesie karnym. Nowe rozwiązania i niewykorzystane możliwości*,, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2005, pp. 67-68.

[70] K. Woźniewski, *Tzw. prywatne opinie biegłych*, „Gdańskie Studia Prawnicze - Przegląd Orzecznictwa” 2005, no. 3, p. 92 et seq.

[71] D. Kala, *Opiniowanie prywatne w świetle unormowań znowelizowanego Kodeksu postępowania karnego*, „Kwartalnik Sądowy Apelacji Gdańskiej” 2016, no. 1, p. 197.

an expert witness in the case."[72]. In a similar vein, Grzegorz Bucoń stated that: „Parties do not have the right to appoint experts on their own. This can only be done by the procedural authority conducting the proceedings, with an order needed for their establishment. The trial authority also decides on the person of the expert and the subject of his expertise. An expert report made by an „expert" not at the behest of the procedural authority, but of the person concerned, cannot have the character of an evidentiary act, and the „opinion" so given cannot be a means of evidence. Taking into account a ‚private opinion' would also lead to a situation in which the person issuing such an ‚opinion' would not be criminally liable for a knowingly false opinion, while the party's choice of ‚expert' would itself raise doubts about his impartiality."[73].

The outlooks presented above are reflected in the jurisprudence, as evidenced by the position of the Supreme Court, which held that: „Private opinions, i.e. written studies commissioned by participants in the proceedings other than authorized trial authorities, are not opinions within the meaning of Article 193 in conjunction with Article 200 § 1 of the Code of Criminal Procedure. and cannot constitute evidence in the case. A necessary condition for a written statement of an expert to be considered an opinion is not only that it be prepared by a court expert, but also that it be preceded by a decision of the trial authority to consult that person as an expert. Thus, it is only with the issuance of an order appointing an expert to prepare an opinion that he becomes a participant in the proceedings, and the opinion issued by him acquires the characteristics of an opinion within the meaning of the rules of criminal procedure."[74]. The SA in Katowice also reasonably assumed that: „Experts are appointed only by the procedural authority conducting the proceedings, with an order required for their appointment. Only such a formal appointment constitutes the existence of experts in the trial. The trial authority also decides on the person of the expert and the subject of his expertise. An „expert" report made by an „expert" not at the behest of a procedural authority, but by an interested person, cannot have the character of an evidentiary act and cannot be a means of proof."[75]. Also deserving of acceptance is the position of Tadeusz Widla, according

[72] K. Eichstaedt, *Znaczenie opinii prywatnej w postępowaniu karnym*, „Prokuratura i Prawo" 2016, no. 4, pp. 90-98.

[73] G. Bucoń, *ADopuszczalność „opinii prywatnej" w procesie karnym, „Państwo i Prawo"* 2009, no. 3, pp. 108-119.

[74] Order of the Supreme Court of January 24, 2008, II KK 290/07, LEX No. 346651.

[75] Ibid.

to whom: „Undoubtedly, a private opinion, as coming from an entity not designated by the procedural authority, cannot be considered a product of expert opinion evidence - with all the consequences that this entails. In the situation described in Article 193 of the Code of Criminal Procedure. therefore, it is not possible to stop at the opinion submitted by a party and a decision must be made to appoint an expert or to consult an institution. Nor can the inconsistency of such a (in-process) opinion with an out-of-process opinion be considered a situation described in Article 201 of the Code of Criminal Procedure. (contradiction between opinions). [...] It is also not documentary evidence. [...] Doctrine and jurisprudence recommend treating out-of-court opinions as the position of the parties informing them of the evidence available to them."[76].

In the context of the positions cited above, it is necessary to consider the procedural status of a person preparing a private opinion for the purposes of a specific criminal proceeding. The Court of Appeals in Katowice, addressing this issue, formulated an apt thesis that: „parties do not have the right to appoint experts on their own. This can only be done by a court or a procedural body conducting a specific legal proceeding, and an order is needed for their establishment."[77]. Acceptance of such a vote leads to the conundrum that individuals who are private experts cannot be treated as trial experts. As indicated in the doctrine of procedural law: „a certain person can perform the procedural function of an expert only if he is formally appointed to it by the procedural authority"[78]. A private expert, therefore, is a person with special knowledge who has been commissioned by one of the parties to a criminal proceeding (e.g., a suspect, defendant, victim, auxiliary accuser, private prosecutor) to prepare a written expert opinion in the shape of a procedural opinion[79]. Admittedly, the author of a private opinion may be appointed by a court or pre-trial authority as an expert, e.g., under the procedure set forth in Chapter 22 of the Code of Criminal Procedure. and submit, pursuant to this order, another written opinion or be questioned, after such order, as an expert[80]. As the SA in Wrocław pointed out: „Despite the fact that there is no impediment to the court issuing an

[76] T. Widla, *Ekspertyzy irrelewantne*, „Prokuratura i Prawo" 2007, no. 10, pp. 5-16.

[77] Judgment of the SA in Katowice of November 20, 2003, II AKa 392/03, LEX No. 120346.

[78] Z. Kwiatkowski, *Problem wykorzystania „opinii prywatnych" w polskim procesie karnym*, in: M. Nowak, M. Golec (eds.), *Współczesne problemy procedury karnej – Ogólnopolska Konferencja Naukowa, 11–12 maj 2004 rok*, University of Silesia, Katowice 2005, pp. 42-45.

[79] B. Błoch,*Charakter prawny tzw. opinii prywatnych w procesie karnym*, „Zeszyty Prawnicze"2018, no. 2, p. 113.

[80] Judgment of the SA in Warsaw of May 6, 2015, II AKa 59/15, LEX No. 1771507.

order to appoint as an expert the author of a „private opinion" performed at the request of a party and presented to the court, to question him as an expert and to include his written opinion (after it has been sustained) in the evidence of the case, such a practice should be rare and come into play only if the court does not entertain any doubts about the reliability and objectivity of the author of such an opinion, his experience and expert skills, as well as the suitability of his special knowledge to give an opinion on a specific issue that requires resolution. However, in no case should a court ignore a ‚private opinion' and mechanically, indiscriminately refuse to include it in the case file or instrumentally dismiss it as not requiring any evaluation."[81]. In the doctrine we can also meet with the position that the person who issued a private opinion can be questioned by the court or other body conducting the proceedings as a witness[82]. However, such a possibility is not *de lege lata* permissible. As Romuald Kmiecik aptly points out, the person who issued the private opinion is usually neither a direct witness of the event to which the proceedings relate (in which case the private expert could appear in the trial as a so-called expert witness, having the procedural status of a witness, not an expert), nor a so-called „witness by hearsay". witness „by hearsay" (*ex auditor*), nor does he take part in evidentiary actions to testify about their course, appearing in the trial as, for example, a specialist, whose examination as a witness is allowed by Article 206 § 2 of the Code of Criminal Procedure.[83]. In addition, questioning a private expert as a witness instead of formally appointing and questioning him as an expert has the effect of excluding him, pursuant to the disposition of Article 196 § 1 of the Code of Criminal Procedure, from the circle of potential experts who could be appointed by the trial authority[84].

Summarizing the above discussion of quasi-experts, it should be said that the opinions of this category of experts often increase the correctness of the procedural decisions made. The opinion of an expert, who is appointed by the court or pre-trial authority, makes it possible to clarify the circumstances requiring special knowledge, and the admission of evidence from a private opinion is important for verifying the procedural opinion and increasing its quality, as well as significantly strengthening the position of the parties in

[81] Judgment of the SA in Wroclaw of August 31, 2017, II AKa 22/17, LEX No. 2402355.

[82] J. Skorupka, *Tzw. opinia prywatna w świetle noweli Kodeksu postępowania karnego z 27.09.2013 r.*, in: Ł. Blaszczak, K. Markiewicz (eds.), *TRola biegłego w postępowaniach sądowych*, Prescom Publishing House, Wrocław 2016, p. 232.

[83] R. Kmiecik, op. cit. pp. 12-13.

[84] Ibid.

the criminal process. Of course, it also happens that the opinions issued by private experts cause a kind of procedural chaos, which is a consequence of the issuance of such opinions by people who do not have the appropriate amount of special knowledge, the selective treatment by these experts of the file material used to issue this kind of opinion, the incomplete evidence available to these experts, and, finally, the expectations of the principal, who is interested in obtaining an opinion with a strictly defined content. Certainly, the procedural position of a private expert needs to be regulated by law. The introduction of a new participant in criminal proceedings, which would be a private expert, is certainly a controversial proposal, but the possibility of the existence of this participant in proceedings on the grounds of the Code of Criminal Procedure should be considered, in particular in order to eliminate the examples indicated above of the negative impact on the course of the trial of the opinions issued by such experts, as well as, among other things, to subject them to criminal liability under Articles 233 § 4 and 4a of the Code of Criminal Procedure. It seems that nowadays it may be a good practice for both courts and pre-trial authorities to co-determine the party's choice of a forensic or *ad hoc* expert, and also the scope of the opinion and the questions posed to the expert. In practice, it can take the form of the court or, for example, the prosecutor setting a deadline for a party to indicate the names of proposed experts, along with the reasons for their selection, as well as the questions to be included in the order appointing the expert(s) or scientific or specialized institution.

Summary

Experts in the criminal process can be helpful both to the trial authority that is conducting the proceedings at a given stage and to the defense.

The procedural position of these participants in the proceedings only at first glance appears to be fully regulated by the provisions of the Procedural Law. A major legislative shortcoming is the only residual normalization of the position of expert consultants and private experts.

The most appropriate, from the point of view of the procedural rules, is to consider the most appropriate form of functioning of expert consultants for the benefit of the procedural authorities to appoint experts of this category to give an oral opinion or to call such experts to participate in the taking of evidence. In contrast, the powers of defense consultants or auxiliary prosecutors are residual in the current legal order.

Despite the significant differences between the institution of an expert appointed by the body of the proceedings and a private expert, the compet-

itiveness of these entities leads to the conclusion that their joint appearance in the criminal process positively influences its course, often also increasing the correctness of the final decision.

In view of the increasing complexity of cases and the need to use people with special knowledge, it is necessary to properly regulate the activities of expert consultants and private experts in the Polish criminal process. The need for changes contained in the Code of Criminal Procedure. regulations on this matter is primarily aimed at improving the quality of private expert opinions issued by experts through the introduction of powers that increase the possibility of verifying the knowledge and skills of this category of experts.

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Contribution of individual authors
Marcin Jachimowicz author of the entire text

Conflict of interest
No

Source of funding
None