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Entities in Polish law issuing opinions using special knowledge

Summary

Allowed under Polish law is the opportunity to consult experts and other persons or specialized institutions having special knowledge, as well as provides the possibility of outsourcing certain tasks to specialists. These are the different procedural institutions, with different competence and required skills as well as various privileges. The correct characterization of the role of these entities and requirements, which they pursue, allows the assessment of the probative value of opinions or activities involving them. The work discusses the requirements to be fulfilled by bodies issuing opinions and acting as specialists. The criteria for evaluating the effects of the work of these entities is also indicated.

Keywords Code of Criminal Procedure, opinion, experts, specialists

Introduction

In Polish judicial and administrative procedures, the process of proof is based on the performance of the taking of evidence before a procedural body. The exception here are the provisions of the law on proceedings before administrative courts[1] in which the proof is limited to the possibility of taking of supporting evidence from documents, if it is necessary to explain important concerns and will not cause excessive length of the proceedings in the case. If it is necessary to refer to special knowledge, as a rule, the court shall appoint an expert witness always when there is special knowledge; it is irrelevant whether to the court or the body has such special knowledge[2]. Giving opinions is not reserved only for experts.

In a criminal trial, in which the issue of expert evidence is the most extensive legislatively; you can use the help of an expert (usually an expert witness – so-called expert list from the list) issuing opinions in accordance with art. 193 of the Code of Criminal Procedure (Act of 6 June 1997, Journal of Laws of 1997, no. 89, item 555, as amended. – Referred to as the Code of Criminal Procedure), psychiatric experts called to give its opinion pursuant to art. 202 Code of Criminal Procedure (The judicature[3] also accepted the view of the possibility of a „preliminary opinion" as to the mental condition by an expert psychiatrist pursuant to art. 193 Code of Criminal Procedure), made by expert examination using technical means (in most cases will concern the use of the polygraph, voice polygraph, functional magnetic resonance imaging). The activities, aimed to deliver an opinion, are also not excluded the participation of specialists.

But these are not all entities in Polish law authorized to issue opinions using special knowledge. The legislation also – beyond expert witnesses – in the Code of Civil Procedure mentioned scientific institutes and scientific-research[4], and in the Code

1 The Act of 30 August 2002, Journal of Laws 2012.270.

2 K. Pachnik, *Liability expert witness – polemicalremarks*, „Temidium" 2015, no. 1, p. 63.

3 Cf. Decision of the Supreme Court dated 21 March 2012, Ref. Act III KK 326/11, Publish. Legalis.

4 At the same doctrine it is, and such a position, according to which although the provisions of the Code relating to expert opinions suggest the possibility seek the opinion of a scientific institute or a scientific-research, however, there is no doubt that and other organizational units not having the status of such an institute (collective persons appointed to carry out specific tasks), they can give an opinion, if you only have needed special messages – see. T. Ereciński, *Commentary to art. 78 of the Code of Civil Procedure*, [in:] M. Jedrzejewska, T. Ereciński Tadeusz J. Gudowski, *The Code of Civil Procedure. Comment. Part One. Fact-finding proceedings. The second part, proceedings to secure clames*, in 2007 LexPolonica.

of Criminal Procedure – access to assistance or specialized scientific institutions. The administrative and fiscal procedures mentioned explicitly only expert evidence, but left open the catalogue of sources of evidence.

Moreover, beyond the procedural laws, it can be described as:

a. experts and specialists who exist where ascertainment of the circumstances revealed by inspection requires special knowledge[5], that is the institution in Polish law of expert-witnesses (the term is not contained in legislation, being formerly removed, e.g. from the military Code of Criminal Procedure[6]; according to the expert-witness doctrine it was a scientific witness, which in addition to the perception of opportunity available to the common man, saw other facts due to the possession of special knowledge[7])
b. expert auditors appointed by the court registration to perform specific actions provided for in the Code of Commercial Companies
c. treasury experts appointed by the enforcement authority to estimate the value of seized belongings or property rights pursuant to Art. 67b of 17 June 1966 on enforcement proceedings in administration[8]
d. judicial units I and II entitled to rule on occupational diseases under §5 of the Council of Ministers of 30 June 2009 on occupational diseases (i.e. Journal of Laws of 2013, item 367)
e. provincial consultants in the field of medicine relevant to the scope of a proposed treatment or diagnostic test, and other persons practicing the medical profession or medical entities having professional knowledge in the field of treatment or diagnostic tests that may give an opinion on the basis of § 5.4 and § 5.9 Regulation of the Minister of Health of 4 November 2014 on the issue of authorization for healthcare services abroad and coverage of transportation costs[9]
f. family diagnostic-consultative centres issuing opinions on the comprehensive diagnosis of the personality of a juvenile, requiring pedagogical knowledge, psychological or medical pursuant to art. 25 § 1 of the Law of 26 October 1982. On proceedings in juvenile cases[10].

5 Art. 12 paragraph 1 7 of the Act of August 5, 2010. On the protection of classified information OJ 2010, no. 182, item 1228.
6 H. Poplawski, Z. Wetland, *Expert opinion as evidence*, Military Review of Jurists 1960, no. 4, p. 459.
7 Ibidem.
8 OJ of 2014, item 1619.
9 OJ of 2014, item 1551.
10 OJ of 2014, item 382.

The correct characterization of these entities and the requirements addressed to them consequently allows determination of the value of the evidence in the context of the principles of assessment of the evidence. Hence it is important to discuss the possibility of occurrence of the evidence and criteria which they must meet.

The expert

Position of the expert from the institutional side is further specified in the Regulation of the Minister of Justice forensic experts of 24 January 2005 (Journal of Laws of 2005 no. 15, item 133), also interpretative guidance can be found in the Code of Administrative Proceedings Code Civil Procedure, the Code of Criminal Procedure and the Tax Code.

The doctrine states the characteristics of an expert as an entity established by a competent judicial body to issue an opinion on a particular issue, the decision requires special knowledge[11]. Special knowledge is considered knowledge that goes beyond a resource held by the average person[12]. This understanding of the institution of an expert is dominant in Polish law and the doctrine was already known at least in the Second Polish Republic[13].

The activity of experts in criminal proceedings[14] is one of the fundamental guarantees of the principle of material truth, and this is the aim and content of the criminal process[15].

Experts (experts) are those who have been established in criminal proceedings in order to perceive certain facts, which requiring the knowledge of experts (in the field of science, technology, arts, crafts etc.) and statement of these facts in an opinion, or at least the statement of professional opinion *in abstracto* needed in a given proceeding, without the knowledge and study of special circumstances of the criminal case (e.g. to determine the chemical composition of a body)[16]. Scope of the opinion is in

11 A. Gaberle, *Evidence in a criminal trial court*, Warsaw 2008, p. 166.
12 T. Widła, *Evaluation of expert evidence*, Katowice 1992, p. 12.
13 J.J. Litauer, *Commentary on civil procedure*, Warsaw 1935, p. 181.
14 But this principle can be generalized.
15 H. Gajewska-Kraczkowska, *Legal and ethical guarantees performance of the duties of an expert psychiatrist in a criminal trial*, „Legal Studies" 1983, no. 4, p. 173.
16 G. Kopczyński, *Confrontation of experts in a criminal trial*, Warsaw 2008, the electronic edition of Lex. The author gives understanding of the concept of „expert" by M. Cieslak, issues of proof in a criminal trial, 1955, vol. I, p. 37, even though it represents described by Cieslak one of the terms the concept of „evidence" presented by S. Sliwinski.

principle indicated in the order of the procedural body[17]. At the same time to give an opinion as an expert may be appointed to both the one who is on the list of court experts (expert from the list of expert witnesses), and the one who is not entered on such a list, which are known to have adequate knowledge in a given field[18], called knowledge specialists *(ad hoc* expert).

The selection requires that special knowledge – which is extremely important for recognition as full-fledged expert opinion – must be current in light of present knowledge. The lack of current special knowledge used to issue opinions in accordance with the position of the Supreme Court – contained in the judgment of 6 November 2000, ref. no. Act IV KKN 477/99, published in the journal „Prosecution and Law" 2001 no. 4 – provides for disqualification of expert evidence. Verification is also subject to applied research methods – expert is unable to judge according to their own beliefs, and based on scientific principles.

In the literature it is noted that the expert may appear in the process not only in the role of an expert, but also as a consultant. He does not carry out separate studies and issue opinions, but only participates in the activities carried out by the judicial body, providing advice and guidance on how to implement these activities or in their interpretation of the result of information. Such a role he fulfils, e.g. an expert present at the examination bodies or an expert psychologist present at the hearing of a witness[19]. Participation is, however, a consultant legally unregulated and formally. The doctrine postulated the formal establishment of the institution of the consultant (of settlement in criminal procedure), as a person who gives procedural body the necessary assistance in activities that require their expertise[20], was not realized.

The doctrine can meet the opinion that the expert is a court assistant. This thesis was sometimes allowed in the interwar period, but it is not currently valid.

This theory has found its echo in the jurisprudence of the Supreme Court from the years 1920–1928 which is before the entry into force of the uniform Code of Criminal Procedure. Chamber V of the Supreme Court judging a case under German law, in a number of judgments, presented the view of the judging court that „a request to call an expert is to be rejected, if it assigns to itself sufficient expertise to identify specific issues"[21].

Currently, the prevailing view is that the need to appoint an expert is whenever there is a need for special knowledge and it is irrelevant whether the court or the body has such knowledge. Correct, therefore, is to determine that the statutory support the operation of justice in cases requiring special knowledge (his opinion is advisory in nature[22]), or saying that experts differ from witnesses, possess expertise and act as a servant to procedural bodies by providing them with the information necessary to settle the matter[23]. The judicature shows that expert evidence, because of the ingredient in the form of special knowledge of this kind is proof, cannot be replaced by another act of evidential value, e.g. hearing witnesses[24]. The sitting of an expert as an assistant to the court would be correct in light of the foregoing, whenever a judicial body, requiring special knowledge, would be entitled to settle the issue on the basis of their own knowledge. However, that situation has been directly challenged in the case law of Supreme Court[25].

It should be noted that according to the amendment of the Code of Criminal Procedure (Art. 393 § 3 of the Code of Criminal Procedure) entering into force on 1 July 2015, introduced the possibility of introducing private documents into the process and the need to reflect. The so-called private expert opinion will be able to be used as „free evidence" subject to reading in open court pursuant to Art. 393 § 2 of the Code of Criminal Procedure and the appeal hearing pursuant to art. 452 § 2 of the Code of Criminal Procedure. The submission of a „private opinion" to the file of the case can be taken on the basis that it is necessary to broaden the evidence of the expert's opinion, although this will not always mandatory[26].

Changing the normative allows submitting to the court the so-called private opinion, but it does not give it the status of equality with the opinion of the expert appointed for its issue by the court. The parties, therefore, by submitting so-called private opinion, will be able to submit an application for admission of expert

17 K. Pawelec, *Dowody w sprawach przestępstw i wykroczeń drogowych*, LexisNexis, Warszawa 2011, p. 416.

18 B. Hołyst, *Podsłuchiwanie i inwigilacja użytkowników mediów elektronicznych w kontekście bezpieczeństwa informacyjnego*, „Prokuratura i Prawo" 2015, nr 3, p. 22.

19 A. Kegel, Z. Kegel, *Provisions on expert witnesses, translators and specialists. Commentary*, Warsaw 2004, p. 35.

20 B. Skiba, *Use of expert evidence in criminal cases of arson*, „Fire Review" 1983, no. 6, p. 15.

21 A. Bardach, *Statutory role in the criminal process*, „New Law" 1958, no. 5, p. 13.

22 T. Rozkrut, *Walor expert opinion in the canonical process of marriage (legal-historical study)*, Tarnow 2002, p. 227.

23 P. Girdwoyń, *Opinia biegłegow sprawach karnych w europejskim systemie prawnym. Perspektywy harmonizacji*, Warszawa 2011, p. 173.

24 Supreme Court judgement of 24 November 1999, ref. I CKN 223/98, Wokanda 2000, no. 3, item 7.

25 Postanowienie Sądu Najwyższego – Izba Karna sygn. akt II KK 331/2006, z dnia 17.05.2007, Krakowskie Zeszyty Sądowe 2007, no. 10, item 35.

26 Z. Kwiatkowski, *Glose do postanowienia Sądu Najwyższego z dnia 21.01.2008, sygn. II KK 290/07*, „Prokuratura i Prawo" 2009, no. 1, p. 164.

evidence (prepared for the defence of the opinion) and interrogation before the court, if the court allows the evidence[27]. The change will allow within the context of the evidence of the parties to use a much wider range of expert expertise including for the purpose of carrying out the procedural side of „control" already submitted in the opinion. Given that control of expert opinion filed in the criminal process is not substantially limited by any criteria[28] – pursuant to Art. 201 Code of Criminal Procedure – It cannot be excluded that circumstance affecting the exercise of the court's content Art. 201 Code of Criminal Procedure may also submit a private document called private opinion used in accordance with art. 393 §3 of the Code of Criminal Procedure. It cannot ignore the question that by the order by the parties of documents, the decision will be made by the court, giving such information specified evidentiary value.

Other entities issuing opinions, laid down in procedural laws

Shortly after World War II was presented the view that an expert can be a legal person, as well as an institution without legal personality[29]. According to other trends they can only be natural persons, connected with the necessity to obtain special knowledge from an appointed expert, which may be possessed only by a person[30].

It should be noted that currently there is a normative distinction between the expert and scientific or specialized institution (scientific institute or scientific research). Such an institution is called upon to issue an opinion, but there is no legal norm which holds it to be proficient (holding abstracts)[31]. Such an institution exists impersonally[32].

Hence, one cannot agree with the view, according to which the concept of „the expert" also refers to research institutes, scientific-research and specialized establishments and institutions established to provide comments at the request of the procedural body[33]. This is an assessment which is in conflict with current law[34]. Legislators did not specify scientific institution as an expert, it is not an expert, but that does not mean that it does not have the authority to issue opinions. This is not because (from the will of the legislature) the power is reserved exclusively to experts[35].

In view of the adoption of a separation between the statutory understanding as a physical person and scientific institutions, in principle you cannot call such a person to be interviewed as an expert, as it is not, but a scientific institution was appointed to issue opinions. Such a person does not release an opinion of their own and therefore cannot be treated as an expert[36]. Hence, narrowing only to the limits of criminal proceedings and misdemeanour cases[37] requires the view that a person involved in the issuing of an opinion on behalf of a scientific institution or a specialized occur on an expert witness since her summons by judicial body for hearing[38]. On the other hand you have to agree with the statement that from the point of view of the procedural process, it can only be an individually identified person (or group of people) because the opinion is the result of personal work specific entity, for which he should be liable[39].

A scientific institution, a specialized institution, scientific institute, scientific-technical institute from the assumption of a research organization, contribute to the achievement of progress in the development of civilization. At the same time the importance of deadlines does not entitle each entity to legitimize itself in this way. The condition for appointment to prepare an opinion is to meet the criterion of „scientific"[40]. It is

27 Justifying of the press of Sejm no. 870 the Seym of the Republic of Poland of the VII term of office, p. 9.

28 K. Pawelec, *Czynności niepowtarzalne w sprawach o wypadki drogowe. Aspekty procesowo-kryminalistyczne,* Warszawa 2014, p. 150.

29 H. Poplawski Z. Wentland, *Presenting the view of St. Sliwinski, Expert opinion as evidence*, „Wojskowy Przegląd Prawniczy" 1960, no. 4, p. 464.

30 Ibid.

31 K. Pachnik, *Odpowiedzialność biegłych w polskim systemie prawnym*, Warszawa 2011, praca doktorska, niepublikowana, p. 47.

32 M. Cieslak, *Issues of proof in a criminal trial*, Warsaw, 1955, vol. 1, p. 294.

33 M. Rybarczyk, *Expert in civil proceedings, Opinion. Responsibility. Remuneration*, Warsaw 2001, p. 8.

34 K. Pachnik, op.cit., p. 47.

35 Ibidem, p. 48.

36 P. Banach, *Evidence of opinion research institute and scientific-research, J. Turek (ed.) The role of experts in the modern process*, 2002, p. 38.

37 In criminal proceedings, such understanding is correct to the content of Art. 200 § 3 of the Code of Criminal Procedure, in cases of offenses that legislation is used in conjunction with Art. 42 of the Code of Conduct in misdemeanor cases.

38 T. Tomaszewski, *Expert evidence in a criminal trial*, the Institute of Forensic Research, Krakow 1998, p. 29. The author cites the opinion of M. Cieslak (M. Cieslak few remarks about the proof of the experts in the draft Code of Criminal Procedure of 1968). On p. 31 Cieslak only person proposes individual identification expert, outside criticism of the opinion of the relevant agency or establishment, does not present such views on the interpretation of Art. 176 d of the Code of Criminal Procedure of 1968, on the contrary indicates that under the draft law then the process will have a thing quite differently, that he considers a mistake.

39 T. Tomaszewski, op.cit., p. 29.

40 T. Tomaszewski, *The competence of private companies to issue opinions in criminal and civil proceedings*, [in:]

the will of the legislature that concluded the limitation that only certain entities may give an opinion. Such authority has been extended to all legal persons or organizational units without the right personality and possessing a certain potential[41].

Specialist

Introduced to the institution of criminal procedure, the specialist is sanctioned in practice, which most commonly involves activities of inspection and experiment involving forensics techniques, performing activities of technical documentation. The specialist is an assistant to the procedural body and is involved in the process carried out by the competent procedural authority in inspection activities, hearings using technical devices to carry out operations at a distance, experiment, expertise, retention or search[42].

Distinguished is the specialist functionaries of the procedural body and not a functionary[43], i.e. an employee of the process authority.

The procedural specialist position is different than an expert: does not give an opinion and, if necessary, can only be interrogated as a witness[44].

On basis of the Code of criminal proceedings the closed catalogue of procedural activities in which a specialist can participate are the following: visual inspection, interviews using technical equipment enabling to carry out this action at a distance, experiment, expertise, seizure and search. Summoning a specialist depends on the discretion of the procedural body[45] which may also summon the expert for an expert (e.g. inspection of the site of a road accident[46]) activities[47].

The specialist institution is known, for example, in Lithuanian criminal procedure, in which an expert relies in those cases where the taking of a criminal investigation or court case when examining special knowledge is required to examine documents, things, or in the event of emergency. In addition, well-known for specialists in criminal procedure, are Russia or Belgium[48].

The above discussion does not rule on all cases of specialist institutions. Both experts and specialists may be appointed in the manner provided in the Act on the Protection of Classified Information.

To the extent necessary for the control of safeguarding of classified information, ISA officers or officers or soldiers SKW, are authorized in writing as having the right to appoint and use the services of experts and specialists, if to ascertain the circumstances under inspection require special knowledge. It seems that the term defines both an expert and a specialist in the group of persons having special knowledge. But otherwise than in proceedings before courts, it is not here dealing with the list of experts (forensic). In addition, the decision to appoint an expert and a decision on the appointment of a specialist is made by an inspector[49]. However, in this case, there is no predetermined dominant role of the appointing authority; such regulations are not even recognized in the field of public understanding, and were placed in the field of civil law relations (basis for issuing an expert opinion, and a detailed report of the research having an impact on the audit findings agreement concluded between the expert and the head of the Internal Security Agency or the head of SKW, defining mutual rights and obligations of the parties, in particular the subject of study, their scope, deadline for drawing up opinions and reports and remuneration[50]). What seems noteworthy, the form of determining mutual rights and obligations in the case of the appointment of a specialist is not introduced.

Doctrine Multiplex veritas una Book of Jubilee offered to Professor Mariusz Kulicki creator of the Department of Criminalistics the occasion of the 35th anniversary of the establishment of the Department of the Faculty of Law and Administration at the Nicolaus Copernicus University, Torun 2004, p. 173.

41 K. Pachnik, op.cit., p. 54.

42 M. Kuźma, *Commentary to art. 205 of the Code of Criminal Procedure*, (ed.) J. Skorupka [in:] *The Code of Criminal Procedure. Commentary*, Electronic Edition Legalis.

43 J. Jerzewska, *Activities carried out with the participation of specialists*, „Contemporary Issues of Criminalistics", 2006, Vol. X, p. 81.

44 T. Tomaszewski, *Evidence from expert testimony...*, op.cit., p. 21.

45 M. Lisiecki, *The use of people with specialized knowledge and skills to assist in the conduct of operations process and forensic*, [in:] *Doctrine Multiplex veritas una Book of Jubilee offered to Professor Mariusz Kulicki creators of the Department of Criminalistics the occasion of the 35th anniversary of the establishment of the Department of the Faculty of Law and Administration at the Nicolaus Copernicus University*, Torun 2004, p. 193 and 195.

46 K. Pawelec, *Evidentiary process in criminal proceedings*, Warsaw 2010, p. 196.

47 The Supreme Court in its judgment of 3 October 2006, IV KK 209/06 Published: The case law of the Criminal Chamber of the Supreme Court and the Military Chamber of the Year 2006, No 12, item. 114, p. 55.

48 H. Malewski, E. Kurapka, *Expert opinion and its place in the Lithuanian criminal procedure*, XI Wroclaw Symposium of Questioned Documents, Wroclaw 2004, pp. 198-200.

49 Accordingly §11 1 and §13 1. Regulation of the President of the Council of Ministers of 27 April 2011. On the preparation and checks on the state of safeguarding of classified information („Journal of Laws" of 9 May 2011).

50 §12 Decree of the President of the Council of Ministers of 27 April 2011. On the preparation and checks the state of safeguarding of classified information („Journal of Laws" of 9 May 2011).

Unclear is the extent of the powers of a specialist. Within statutory regulation it appears that both experts and specialists are appointed if the statement of the evidence during the audit period established the requirement of special knowledge, the controller shall draw up documents fixing the course of acts performed with the participation of the specialist[51]; These documents subsequently are signed by the controller and the specialist, so you can see the difference between the expert and the specialist, that the former issues opinions on the basis of an agreement with the head of the Internal Security Agency or the head of SKW, and the latter makes conventional operations using special knowledge that are fixed in the form of a protocol by the controller. Both entities however must have special knowledge and their help can be used to determine the circumstances disclosed during the audit period.

The controller sets the facts on the basis of the collected evidence during the proceedings, which are in particular documents, secured objects, the results of the examination, the testimony of witnesses, expert opinions and written explanations and statements[52]. This observation is of such importance that it can be determined that the opinion of an expert can be a source of evidence, and in the case of activities performed by a specialist source of evidence will, as a rule with this action, a protocol prepared by the inspector and signed by the inspector and by a specialist.

Importantly, there is no legal justification for the application of the provisions of criminal procedure respectively for experts or specialists to proceedings conducted pursuant to the Act on the Protection of Classified Information. However, pursuant to article 3 of the law, the application of audit procedures will be exhaustively listed articles of the code of administrative procedure (k.p.a.). So it seems that for understanding the expert institution should in this case be guided by the conceptual grid of the doctrine of administrative law and judicature of the administrative courts. In Art. 75 of the Administrative Code establishes exhaustive list of the evidence in the proceedings and mentioning in the content of expert opinion as an example of evidence, while not referring explicitly to the specialist. Perhaps such a person – based on the administrative procedure – could be heard, in fact activities made themselves, which would create the possibility of a procedure similar to a witness-expert[53].

Other entities issuing opinions

In addition to the distinguished expert institutions, specialist, scientific institutions, specialized institutions, institute of scientific and scientific-research institute there are at least five entities, which are legitimized to issue opinions on the basis of special knowledge.

In Art. 25 § 1 of the Law of 26 October 1982 on proceedings in juvenile cases, regulates the institution of family diagnostic and consultative centres (RODK). RODK give its opinion, if necessary to achieve a comprehensive diagnosis of the personality of a minor, requires pedagogical knowledge, psychological or medical treatment and to determine the correct directions for the juvenile, although the family court may ask for an opinion as to other specialized facilities or expert or experts from outside the family diagnostic and consultative centre. Opinion of RODK (or other specified entity) is also needed before ruling on placing the juvenile in a youth care centre, a therapeutic entity which is not an entrepreneur, a social welfare home or reformatory.

According to the judiciary, the proper application of art. 25 § 2 of the Act of 1982 on proceedings in juvenile cases on the basis of art. 10 § 2 of the Penal Code requires consultation in order to get a comprehensive diagnosis of the personality of a minor by a criminal court before a ruling sentencing a juvenile to imprisonment. Applying the rule of inference from argumentum *a maiori ad minus,* the conclusion that if the legislature requires seeking such an opinion before being placed in a juvenile correctional facility, the more this must be done before sentencing that person to imprisonment[54]. In turn, the use of educational or correctional centres under the conditions specified in Art. 9 § 3 of the Penal Code (Currently 10 § 4 of the Penal Code) need not be preceded by a study of the accused in a family diagnostic and consultative centre, although these tests may sometimes be expedient and desirable[55].

51 §13 2. Regulation of the President of the Council of Ministers of 27 April 2011 on the preparation and conduct of the State security of classified information (OJ of 9 May 2011).

52 §7 2. Ordinance no. 46 of the President of the Council of Ministers of 30 July 2013, on how to carry out by the President of the Council of Ministers to control the proceedings carried out by the internal security agency or the Military Counterintelligence Service (M.P. from August 5, 2013).

53 The terminology of US law distinguishes evidence of laymen witnesses, non-expert (l *ay witnesses)* from expert witnesses *(expert witnesses).* In the present nomenclature, the expert witness will always be an expert, but his institutional position does not differ as to the identity of the expert occurring in the Polish legal system; cf. R. Tokarczuk, „American Law", Warsaw 2007, p. 261.

54 Wyrok Sądu Apelacyjnego we Wrocławiu, sygn. akt II AKa 311/12, z dnia 06.11.2012 Lex.

55 Postanowienie Sądu Najwyższego – Izba Karna, sygn. akt V KZP 22/89, z 28.11.1989 OSP 1991/6 poz. 153.

On the other hand, keep in mind that the opinions of RODK are not prepared to determine the soundness of the perpetrator at the time it was performed, but in order to determine the extent of his demoralization and, consequently, ruling the measure provided for in the act on juvenile delinquency proceedings. This kind of opinion even released in the activities of the centre by a psychiatrist cannot substitute the opinion on the state of mental health, given by at least two expert psychiatrists, referred to in Art. 25a § 1 of the law on juvenile justice[56].

In carrying out the evidence from the centre, the court shall apply the provisions of Art. 279, Art. 284, Art. 285 § 1 and 3, Art. 286 and Art. 290 of the Code of Civil Procedure[57].

The conducted surveys (from employees of the family diagnostic and consultative centre) and previous research, court records show that in over 80% of cases, family court rulings are consistent with the proposals of these centres. As confirmed by this study, family courts ordering the execution opinion are most interested in the answer to the question that should be applied to a juvenile or correctional educational centre[58].

The second group of entities issuing the opinion on the use of special knowledge is mentioned by the introduction of the provincial consultants working in the field of medicine relevant to the scope of the proposed treatment or diagnostic tests, and other persons performing medical profession or medical entities having professional knowledge in the field of treatment or diagnostic tests that may seem opinions on the issue of authorization for healthcare services abroad and to cover transport costs. These entities in these procedures must be regarded as ancillary to the decision making authority[59].

This institution was not widely discussed in legal literature, while some guidance as to the interpretation and evaluation of this evidence provides by the judicature.

The actual text of such an opinion consultant cannot be perfunctory[60]. It should consider all the arguments put forward in the application of the patient to be referred for treatment abroad, including taking into consideration whether treatment abroad, at a specified medical centre (using a specific method), will be for the patient more effective than national treatment, especially in terms of avoiding serious side effects that another treatment method in country[61]. In contrast, the authority issuing substantive opinion on the (President of the National Health Fund) is obliged to assess that opinion as part of the evidence collected pursuant to Art. 75 k.p.a. and in a manner appropriate to the requirements of this step in the administrative procedure.

In a situation where the issue is important, as the feasibility of the treatment in country, occurs discrepancy between the assessment made by a doctor filling a request for consent to the treatment and the opinions of consultants, the body cannot, without careful consideration of these discrepancies, stop the opinion of the national consultant. There is no reason to assume that as a rule, the opinion of the national consultant has a particular probative value and that it cannot be questioned[62].

The third category of entities are expert auditors. By virtue of the Code of Commercial Companies (k.s.h) they are entitled to audit financial statements in order to investigate the accounting policies and activities (art. 223 of the k.s.h) of a company or audit of the founders of the company in terms of its validity and reliability, as well as to deliver an opinion, that is the fair value of contributions in kind and whether it corresponds to at least the nominal value of shares or for no higher issue price of the shares, and whether the amount awarded in compensation or payment is justified (Art. 312 of the k.s.h), or to determine the market price – or repurchase at fair prices – shares (Art. 418 § 7 [1] k.s.h). The auditors are also competent for research into the accuracy and reliability of the conversion plan referred to in Art. 559 § 1 k.s.h.

At the same time, unlike in the case of the experts, there is no institution of the expert auditor *ad hoc,* and auditors are members of professional self-governing auditors and are subject to self-governing disciplinary liability[63]. Furthermore, it is the court of registration determines the remuneration for the work of the auditor and approval of the spending bill. If the initiator does not pay the debts, the registry court can collect them in a manner provided for the execution of court fees.

Another group are treasury experts. The legal position of these is separately regulated in the law on administrative enforcement proceedings[64]. Treasury

56 Wyrok Sądu Najwyższego – Izba Karna, sygn. akt III KK 334/08, z dnia 18.02.2009, „Biuletyn Prawa Karnego" 2009/5.

57 Art. 25 of the Act of 26 October 1982. On proceedings in cases involving minors.

58 E. Skrętowicz, E. Kruk, *Commentary to art. 25 of the Law on juvenile justice*, [in:] T. Bojarski, E. Kruk, E. Skrętowicz, *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warszawa 2014, Lexis.pl.

59 Wyrok Naczelnego Sądu Administracyjnego, sygn. akt II GSK 1350/13, z 13.11.2013 http://orzeczenia.nsa.gov.pl.

60 Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie sygn. akt VI SA/Wa 3558/13, z 25.03.2014 http://orzeczenia.nsa.gov.pl.

61 Wyrok Naczelnego Sądu Administracyjnego, sygn. akt II GSK 346/12, z 06.06.2012 http://orzeczenia.nsa.gov.pl.

62 Wyrok Naczelnego Sądu Administracyjnego sygn. akt II GSK 560/10, z 18.05.2011 http://orzeczenia.nsa.gov.pl.

63 See K. Pachnik, *Ustawa o biegłych rewidentach. Komentarz*, LexisNexis, Warszawa 2013.

64 W. Grześkiewicz, *Egzekucja administracyjna – teoria i praktyka*, ABC, Warszawa 2006, Lex, Section 5

experts are persons having authority to estimate the value of movable property or property right principal.

Like experts, treasury experts also may not use the title of treasury expert outside the framework of enforcement proceedings, in particular, they cannot use it giving opinions and making other actions in the exercise of a profession or informing a business[65].

Taking into account that if the provisions of the law on administrative enforcement proceedings do not provide otherwise enforcement proceedings follow regulations of the Code of Administrative Procedure; it is necessary to notice, from the essence of evidence, the opinion must include the justifications. Moreover, the justification must allow an analysis of consistency and correctness of conclusions, so that the body does not need special knowledge.

A treasury expert is required to so indicate and explain the reasons that led him to the conclusions presented[66].

Without allowing a significant simplification to accept the view of a judgment, the enforcement authority is bound by the estimate made by the expert, since they do not, in this area, conduct evidence[67]. The role of the authority is to verify at least the formal correctness of the opinion of the treasury expert, because the document does not meet the formal requirements, cannot be regarded as an expert opinion. Similarly, it is not reserved to the executive authority to disqualify the opinion of a treasury expert as *prima facie* erroneous.

Moreover, when the required does not agree with the estimate by the treasury expert of the value of movable property or property rights, he may apply to the enforcement authority to the request for this estimate by a court expert (which some authors erroneously equate with making super expertise[68]). So that the obliged may exercise his powers in a conscious way, the opinion must contain an estimate of the restoration process, the same estimate.

It is worth noting that the essence of such a regulation is based – with some modifications – on the institution of contradictory expert opinion, which is characterized by the fact that not only the judicial body has the right to appoint an expert, but other parties also have this right. The expert appointed by the party takes part in the process on the same terms as the expert appointed by the judicial body. He has the same rights and the same responsibilities[69]. The alteration depends on the fact that an expert witness is not involved in proceedings relating to estimates from the beginning, but from the moment of summoning, after performance of the estimation by the treasury expert. Furthermore, it is determined by the party, it is not so-called private expert, but by the authority on the request of a party (as a treasury expert appointment as an institution, not a specific person). In the case of contradictions between the opinions, legislators did not indicate that the opinion of a court expert acts as meta-opinion or super-expertise.

It is postulated that the doctrine that the estimate made by the expert witness should constitute an independent act of a valuation performed by a treasury expert in the sense that it should not constitute a means of checking the accuracy of the original valuation. The legislature did not foresee further steps in the assessment of a forensic expert opinion, but it is hard to recognize accepting the opinion of the treasury expert, even while raising objective doubts, as evidence absolutely binding. This would be a sign of professing the principle of formal truth, which is clearly contrary to the applicable administrative procedures and judicial principle of objective truth[70].

On treasury experts, rests the obligation regarding a value estimation by summons of the enforcement authority, the preparation of the assessment protocol in the name of the treasury expert with the treasury division, on the list which was written.

Noteworthy is the issue of the lack of territorial restrictions in terms of choice of an expert. However, if there is an intention to estimate the value of the debtor's assets located outside the operation of the treasury division on the list, whose expert has been entered, it is not required to take up the valuation. However, if such consent expresses, perhaps – the call of the enforcement authority – do it without obstacles[71].

The last of these entities are units of first and second degree entitled to rule on occupational diseases – the subject has so far not been taken up in legal literature.

Proceedings determining occupational disease is twofold. It consists of a recognition of a diseased

enforcement authorities and participants of enforcement, other participants enforcement proceedings, expert in enforcement proceedings.

65 P. Przybysz, *Postępowanie egzekucyjne w administracji. Komentarz*, LexisNexis, Warszawa 2011, Lex, Commentary on Art. 67c.

66 D. Kijowski, *Ustawa o postępowaniu egzekucyjnym w administracji*. Komentarz, Wolters Kluwer, Warszawa 2010, Lex., Komentarz do art. 67c.

67 A. Skoczylas, *System prawa administracyjnego*, t. 9, P*rawo procesowe administracyjne*, ed. by R. Hauser, A. Wróbel, Z. Niewiadomski, C.H. Beck, Warszawa 2014, Legalis, Chapter XV, The enforcement proceedings in administration, § 57. Operators and participants in enforcement proceedings, VI Eligible entities for valuation of principal.

68 Ibidem, Chapter XV The enforcement proceedings in administration, § 57. Operators and participants in enforcement proceedings, VI Eligible entities valuation of principal.

69 Z. Kegel, *Expert opinion from position of the procedure and forensic science*, Warsaw and Wroclaw 1976, p. 64.

70 R. Suwaj, *Ustawa o postępowaniu egzekucyjnym w administracji. Komentarz*, ed. by D. Kijowski, Wolters Kluwer, Warszawa 2010, Lex, Commentary to art. 67d.

71 Ibidem, Commentary to art. 67c.

individual by an authorized person referred to in § 5 of the Council of Ministers of 30 June 2009 on occupational diseases (Journal of Laws of 2013, item 1367) as the first phase and the decision of the administrative body (administrative decision) confirming an occupational disease or a decision that no grounds for finding an occupational disease was found issued pursuant to § 8 of the said regulation.

Because the diagnosis of an occupational disease requires specialized knowledge in classical regulation contained in the Code of Administrative Procedure, for this purpose would be used expert evidence. However, the field of occupational diseases is provided special regulation, pointing to authorized entities in § 5 decree, i.e. judicial units I and II degree entitled to rule on occupational diseases.

Judicial units of the first degree are: 1) provincial occupational disease clinics occupational health centres; 2) outpatient clinics and occupational diseases, medical universities (medical schools); 3) infectious diseases clinics provincial occupational health centres or clinics and departments of infectious diseases at the provincial level – in the field of occupational diseases of infectious and parasitic diseases; 4) medical entities, in which there was hospitalization – in diagnosing occupational diseases of employees hospitalized because of the appearance of acute symptoms of illness. Judicial units of the second degree, of which judgments are delivered by physicians employed in judicial units of the first degree, are research institutes in the field of occupational medicine. Having jurisdiction (issuance of a medical certificate) for occupational diseases is a physician that meets the eligibility requirements specified in regulations issued pursuant to art. 9 paragraph 3 of the Act of 27 June 1997 on occupational health service (Journal of Laws of 2004, n. 125, item. 1317, as amended) employed in one of the aforementioned units of jurisprudence.

Thus, interested professional diagnosis of the disease is directed to study for a ruling on the diagnosis of occupational disease or that no grounds for its recognition to the judicial unit of the first degree, and in the case of disagreeing with the issued medical certificate, is directed to the study by the judicial unit of the second degree, which must be made by a qualified doctor.

Adjusting the regulation is vague because on the one hand it emphasizes the existence of jurisprudence units of the first and second degree, on the other hand it points out that jurisdiction for occupational diseases is that of a doctor employed in a judicial unit of the first or second degree. It seems that there should be such an interpretation issued by the judicial unit; however, such opinion must rely on the medical certificate issued by a medical specialist working in the judicial unit. So the opinion is made by a doctor, a specialist referred to in regulation, and opinion should take the form of a judgment. However, this opinion will be issued „on behalf" of the judicial unit.

Opinion of the judicial entity is subject to a two-step control. The goal of the regulations contained in § 7.1 of the regulation on occupational diseases is to ensure – at the request of the employee – the possibility of a quasi-appellate review on the lawfulness of a medical certificate by an entity other than the one that issued the ruling unfavourable to him[72].

In addition, the opinions of judicial entities are evaluated evidence. The role of the sanitary inspection bodies is not to duplicate medical certificates issued by these entities, but the settlement of a statement of occupational disease, the decision about no grounds to conclude an occupational disease must be based on evidence, particularly the data contained in the medical and occupational exposure assessment of an employee or former employee. If the competent state sanitary inspector, before the decision, finds that the evidence is insufficient for a decision, it may request the doctor who issued a medical certificate, for additional justification of that decision, by request to the judicial body of the second degree for additional consultation or take other steps necessary to complete this material.

For example, if the occupational exposure assessment card is made in the prescribed manner, as one of the essential elements on which a medical certificate is issued, it cannot be assumed that the correct decision can be (or supplementing such ruling) issued without having been read by a physician ruling from the assessment[73].

So there is no subsequent circumstance irrevocably binding the administrative authority to the medical content.

It should be noted that the judgment of the diagnosis of occupational disease or that no grounds for its diagnosis must be based on the results of the medical examination and ancillary medical records of the employee or former employee, documentation of the employment and occupational exposure assessment. Occupational exposure is assessed taking into account, the manner of work, degree of exercise load and the timing of activities that can cause excessive load on the corresponding organs or systems of the human body.

Moreover, if it is established by a doctor that the employee carried out his work in occupational exposure conditions which, in the light of available medical knowledge can cause this disease, the doctor as sanitary inspection authorities are

72 Wyrok Wojewódzkiego Sądu Administracyjnego w Bydgoszczy sygn. akt II SA/Bd 509/11, z 19.07.2011 r. http://orzeczenia.nsa.gov.pl.

73 Wyrok Wojewódzkiego Sądu Administracyjnego w Gdańsku, sygn. akt III SA/Gd 86/12, z 08.03.2013 r., http://orzeczenia.nsa.gov.pl.

obliged to recognize the illness as an occupational disease[74].

This presumption lapses if the collected evidence can conclusively or with a high probability exclude such a causal link[75].

It should be emphasized that a decision of the competent authority of the sanitary medical facility is binding, but this is not the same uncritical acceptance of the information contained in it, as it is subject to – as each piece of evidence in the proceedings – be assessed for criteria set in the content of Art. 7, Art. 77 § 1 and Art. 107 § 3 of the Code of Administrative Procedure. The essence of the binding authority is that the authorities, without having counterevidence that could undermine these rulings, have no evidence in this regard to assume that the actual state of health is shaped differently than the amount stated in the study underpinning these judgments[76].

End

Both expert and specialist play a role in the process of service. Both actors perform tasks assigned by the body conducting the proceedings[77]. Similarly, you can also characterize other entities mentioned in the article.

Please note that the expert (and other entities) should never comment on the value of evidence. This is only the responsibility of the authority process, which evaluates it based on calculations by the expert diagnostic value in the context of other evidence of probative value. Only the expert can (and should) by his calculations lead to the conclusion of the opinion – likely to be categorical[78].

All the presented evidence is assessed evidence made by the court or by the authority, which will then be assessed by the court.

As postulated in the doctrine, expert evidence must be assessed in particular in terms of:

1. disposition of expert special knowledge
2. accuracy of opinion with indications of formal logic, compliance with life experience and knowledge (a question of factual correctness)[79]
3. completeness and clarity of opinion and lack of conflict with another opinion disclosed in the course of the proceedings (as well as proceedings before the competent body)[80]. The opinion is full and clear and there is no unexplained contradiction between it and other opinions disclosed in the course of the trial (judgment of the Supreme Court of 6 May 1983, ref. no. IV KR 74/87, published in Supreme Court rulings. Penal and Military chamber 1983 no. 12, item 102, a decision of the Supreme Court dated 16 July 1997, ref. Act II KKN 231/96, published in Prosecution and Law 1998 no. 1, item. 12).

The evaluation of evidence should be made taking into account the diagnostic value of methods used to research and regarding the fulfilment of the normative framework of individual measures of inquiry. Therefore, it is important to meet the objectives outlined by the legislature, and the well-established case law for criteria of the evaluation of evidence.

Such requirements should be transposed by analogy to other institutions described, except when it is not possible to use the analogy of the transposition of legislation on statutory bodies and transfer them directly as a model for the requirements in the opinion of others. Convergent goal – i.e. harmonize the requirements of individual evidence – is possible to achieve due to the use of all the evidence resulting from the use of special knowledge of the same – on the basis of each of the procedural laws – the criteria for assessing evidence.

You can call into question the necessity of isolating non-statutory bodies that which give opinions using special knowledge or perform other actions – as specialists. It seems that the unification of issuing bodies using special knowledge would serve the elaboration of a single line of jurisprudence, but also constitute a contribution to deepened theoretical-legal reflection. Currently, because a large group of entities described above due, to its niche, remain outside the interest of legal doctrine, while maintaining diversity on the basis of normative causes that cannot be directly transposed to these entities views set for the institution of the expert.

Translation Ronald Scott Henderson

74 J. Cysek, *Sądowa kontrola decyzji w sprawach chorób zawodowych*, „Administracja, Teoria, Dydaktyka, Praktyka" 2009, nr 4, pp. 69–85.

75 Wyrok Naczelnego Sądu Administracyjnego sygn akt II OSK 2492/12, z 12.02.2013 r., http://orzeczenia.nsa.gov.pl. and wyrok Naczelnego Sądu Administracyjnego, sygn. akt II OSK 247/12, z dnia 27.04.2012 r., http://orzeczenia.nsa.gov.pl.

76 Wyrok Wojewódzkiego Sądu Administracyjnego w Krakowie, sygn. akt III SA/Kr 749/11, z 08.03.2012 r., http://orzeczenia.nsa.gov.pl. And wyrok Wojewódzkiego Sądu Administracyjnego w Bydgoszczy, sygn. akt II SA/Bd 1427/14, z 04.03.2015 r., http://orzeczenia.nsa.gov.pl.

77 J. Jerzewska, *Expert and specialist*, „Problemy Współczesnej Kryminalistyki", 2000, vol. III, p. 134.

78 J. Wójcikiewicz, *Ekspertyza hemogenetyczna jako dowód w procesie karnym*, „Prokuratura i Prawo", 1995, nr 7, p. 56.

79 T. Grzegorczyk J. Tylman, *Polish criminal proceedings*, Warsaw 2005, p. 481.

80 B. Szerszenowicz, *Evidence of expert opinion in the case law of the Supreme Court*, p. 69; „Military Legal Inspection" 1988 no. 1, pointing to the notion M. Cieslak, Glos, no. 4 of 1985., pp. 104–106.