

SPECIALISTIC EXPERTISE IN THE POLISH DOCTRINE OF PENAL PROCEEDINGS AND CRIMINALISTICS

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S u m m a r y

Both on a ground of Polish legal literature and judicial decisions as far as since a long time ago a concept of an expertise has been functioning. This term was commonly used at courts and authorities to exercise investigation proceedings. Although you should pay attention onto a fact that until the Code of Penal Proceedings from 1969 was published a concept of an expertise had been a concept being not set by regulations.

According to some representatives of the penal proceedings' doctrine these names are featured by a little precision because there are used for designation of various procedural acts. Especially one ought to refer to the concepts: expertise, examination, and opinion because these concepts are the most often used in science and practice.

Defining a concept of an expertise one can state that it is the totality of expert's performances being made especially on order of procedural organs at using by this expert the special knowledge, which is indispensable to elucidate or decide about the problem.

On a ground of the Polish science of criminalistics one can find more detailed considerations referring to the concept of an expertise as well as its handling. Here as follows, the majority of authors by an expertise understands a set of investigative acts, which requires special knowledge and for that reason being performed by an expert on order of a procedural organ as well as completed by an opinion, which could be of an evidential character in the lawsuit.

In particular, to the scope of acts included into the contents of an expertise belong:

- introductory analysis of material to be designed for examinations as their first stage;
- acquisition of comparative material or participation of an expert in acts of procedural organs aiming to an acquisition of this material. This act should be undertaken when together with an expertise's order we will not get any comparative materials or this material is inappropriate to undertake examinations;
- particular inspection of comparative material as well questioned one;
- identification examinations, which are in application of defined methods, as a result of which you may establish identity or divergence among questioned and comparative material;
- other examinations, especially appropriate for this domain, which had delivered special knowledge, indispensable to perform a given proceedings' act, e.g. physical and optical (absorption, luminescence) or chemical (chromatography) in performing documents' expertise in the technical framework;
- investigative (specialistic) experiments, which differ from proceedings' experiments.

Both on ground of Polish legal literature and judicial decisions as far as since a long time ago a concept of *an expertise* has been functioning¹. This term was commonly used at courts and authorities to exercise investigation proceedings. Although you should pay attention onto a fact that until the Code of Penal Proceedings from 1969 was published a concept of *an expertise* had been a concept being not set by regulations.

A legislator in the valid Code of Penal Proceedings from 1997 in the Art. 194 Item 1, 2 (similarly as the Code of Penal Proceedings from 1969 in the Art. 176 § 2) as well as in the Art. 198 § 3 uses a term of *an expertise*. Furthermore one should add that in the remaining articles of the Code of Penal Proceedings for defining procedural acts being used interchangeably with *an expertise* the legislator places such names as: an opinion (Art. 193 § 1-3, Art. 194 Item 1-3, Art. 194 Item 1-3, Art. 200), examination (Art. 198 § 2), observation of the mentally ill (Art. 203 § 1), inspection (Art. 207 § 1, Art. 208, Art. 209, Art. 210, Art. 212), post-mortem examination (Art. 209, Art. 210), experience or reconstruction (Art. 211) for defining the so-called procedural experiments.

According to some representatives of the penal proceedings' doctrine these names are featured by a little precision because there are used for designation of various procedural acts. Especially one ought to refer to the concepts: *expertise*, *examination*, and *opinion* because these concepts are the most often used in science and practice².

Z. Kegel as an opponent of identifying with him the above mentioned concepts does comprehend *an expertise* twofold. In the first meaning, *sensu largo* – into the contents of *an expertise* come not only acts of its executor (an expert) but also acts of a procedural organ (an orderer), which are connected with *an expertise*. To these acts one should include:

- undertaking own initiative or, on order of parties, a decision on purposefulness of performing an expertise;
- issuing a resolution on performing an expertise and appointing an executor of an expertise;
- carrying out by a procedural organ the so-called general tutorship over a charged expertise. This tutorship should manifest itself mainly in defining by a procedural organ a scope of examinations, deciding on the need of their enlarging, deciding on the need of application of methods, which may lead to, e.g. it often takes place in framework of technical examinations of documents, to damage of investigative material as well as defining an expertise performance deadline;
- control over a progress of an expertise;
- notification of parties on issuing a decision on an expertise performance as well as about that to whom an expertise has been ordered to be performed;
- appreciation of an opinion³.

Notwithstanding in the second meaning by *an expertise sensu stricto* one should understand the only expert's acts, which are performed in framework of an expertise⁴: to which one includes an examination, report from performed examinations as well as conclusions, which have been worked out from these examinations, i.e. an opinion.

Defining a concept of *an expertise* one can state that it is the totality of expert's performances being made especially on order of procedural organs at using by this expert the special knowledge, which is indispensable to elucidate or decide about the problem⁵.

¹ M. Cieślak, Ekspertyza [An Expertise] [In:] Z Zagadnień Kryminalistyki [From Problems Of Criminalistics], Fasc. 5: 1970, p. 20; id., Zagadnienia dowodowe w procesie karnym [Evidential Problems In The Penal Proceedings], Vol. 1, Warsaw 1955, p. 254; S. Kalinowski, Opinia biegłego w postępowaniu karnym [An Expert's Opinion In The Penal Proceedings], Wrocław 1973; id., Polski proces karny [Polish Penal Proceedings], Warsaw 1971, p. 328; Z. Kegel, Dowód z ekspertyzy pismoznawczej w polskim procesie karnym [A Proof From Handwriting Expertise In The Polish Penal Proceedings], Wrocław 1973; id., Ekspertyza ze stanowiska procedury i kryminalistyki [An Expertise From The Position Of Procedure And Criminalistics], Wrocław 1976, pp. 16-17; id., Niektóre procesowe i kryminalistyczne zagadnienia pojęcia „ekspertyza” [Some Proceedings' And Criminalistics' Problems Of The Concept Of An „Expertise”] [In:] „Przegląd Prawa i Administracji” [Law And Administration Review] – Acta Universitatis Wratislaviensis, Vol. 5: 1974; Polski proces karny [Polish Penal Proceedings], Warsaw 1975, p. 198; S. Śliwiński, Polski proces karny przed sądem powszechnym. Zasady ogólne [A Polish Penal Proceedings Before The Universal Court. General Principles], Warszawa 1959, p. 327.

² Kegel, Ekspertyza... [An Expertise...], p. 16: conf. T. Tomaszewski, Dowód z opinii biegłego w polskim procesie karnym [A Proof From An Expert's Opinion In The Polish Penal Proceedings], Cracow 1998, pp. 22-23.

³ Kegel, Ekspertyza... [An Expertise...], p. 15.

⁴ Ibid., pp. 14-15; id., Niektóre procesowe... [Some Proceedings'...], p. 69; A. Kegel, Z. Kegel, Przepisy o biegłych sądowych, tłumaczach i specjalistach. Komentarz [Regulations On Judicial Experts, Translators-Interpreters And Specialists. Comments], Wrocław 2004, pp. 117-118.

⁵ Z. Kegel, Dowód... [A Proof...], p. 54; id., Niektóre procesowe... [Some Proceedings'...], p. 73.

A bit otherwise this problem is comprehended by Z. Czeczot and M. Czubalski. The are of the opinion to apply the name of *an expertise* exclusively in relation to acts, which are undertaken by an expert on ground of a decision issued by a proceedings' organ. A lack of an official appointment of an expert results the examinations possibly to be treated only as an auxiliary component of another act (e.g. of an inspection) but not as an independent evidential act¹.

In this meaning into the composition of *an expertise* enter:

a) examination, which includes

1. observation of phenomena made by instrumentation or without it (simple or complicated), which requires in some situations to act onto an examined object (e.g. a document to be technically examined) by chemical reagents or experimenting;
2. perception;
3. recording observations (e.g. with use of instrumentation, in memory or notes);

b) report from examinations made, which take shape as

1. oral (to the protocol);
2. written (description of performed examinations). Both an oral and written report should contain such elements as: giving an observation method, giving performed notices, or possible methods of recording of the performed observations;
3. conclusions drawn from examination, i.e. an opinion².

Then S. Śliwiński, writing on the subject of *an expertise*, states that it can be only circumstances, which can be explained either by special knowledge or using an experiment. By its scope *an expertise* amounts to the examination. In the framework of an expertise (examination) its performer (expert) has a duty to report orally or written way on performed observations as well as to edit an opinion based on these notices³.

At the beginning M. Cieslak identified *an expertise* only with an examination stating that "a control of veracity of related to things evidential means will follow especially with help of an expertise..." as well as that "an examination shall undergo..."⁴. The author was distinguishing in the other place within *an expertise* the only examination's performance, deliverance of a report from these examinations and in special from performed observations and an edited opinion from these observations⁵. At the same time he was separating an expertise from an opinion when writing: "... to avoid an expertise's performance or an opinion deliverance"⁶. In such turn of a sense *an expertise* was an equivalent of an examination⁷.

Teens years later the same author presents the same *expertise* in two meanings⁸. In the first one by an expertise in a strict meaning he understands the examination as itself to be performed by an expert aiming to edit his or her opinion. In the second one though, by *an expertise* in a wider sense he admits the entity of an expert's acts in the case including an opinion and its presentation to a proceedings' organ⁹.

M. Lipczyńska on the other hand clearly indicates to identify under no consideration *an expertise* with an opinion. And as she gives furthermore: "an opinion is only a part of *an expertise* and simultaneously an examination's result, which together with an opinion constitute *an expertise* an entire set of acts of an expert". "*An expertise*" should be understood as "an entity of investigative acts of an expert together with an opinion, which has been edited resulting the performed examinations in the scope defined by a court or a public prosecutor"¹⁰.

In a collective work by M. Siewierski, J. Tylman and M. Olszewski we find a concept of *an expertise understood as*: "The entity of expert's acts, which includes performing an examination by

¹ Z. Czeczot, M. Czubalski, *Zarys kryminalistyki* [An Outline Of Criminalistics], Warsaw 1973, p. 241.

² Z. Kegel, *Dowód...* [A Proof...], p. 53.

³ Śliwiński, *op. cit.*, p. 327.

⁴ Cieslak, *Zagadnienia dowodowe...* [Evidential Problems...], Vol. 1, p. 372.

⁵ *Ibid.*, *loc. cit.*; *id.*, *Polska procedura karna. Podstawowe założenia teoretyczne* [Polish Penal Procedure. Essential Theoretical Assumptions], Warsaw 1984, p. 428.

⁶ *Id.*, *Zagadnienia dowodowe...* [Evidential Problems...], Vol. 1, p. 325.

⁷ *Ibid.*, p. 325; Z. Kegel, *Niektóre procesowe...* [Some Proceedings'...], p. 71.

⁸ *Psychiatria w procesie karnym* [Psychiatry In The Penal Proceedings], Warsaw 1991, pp. 382-383.

⁹ *Ibid.*, pp. 382-383.

¹⁰ M. Lipczyńska, *Polski proces karny. Zagadnienia ogólne* [Polish Penal Proceedings. General Problems], Vol. 1, Warsaw 1986, p. 178; *conf.* Kalinowski, *Polski...* [Polish...], p. 328; *id.*, *Postępowanie karne. Zarys części ogólnej* [Penal Proceedings. An Outline Of A General Part], Warsaw 1963, p. 305. *Id.*, *Opinia biegłego...* [An Expert's Opinion...], p. 127 where the author is writing: "... a word *expertise*, used in the Code of Penal Procedure, would signify an expert's proceedings' activity and must be understood as a synonym of expert's acts' definitions".

him or her, which is completed by issuing a written or an oral opinion”¹. In this definition a main stress has been laid onto a subject who performs *an expertise* and besides in this formulation into *an expertise* would come in then the following acts: examination, reporting the examination, and issuing an opinion.

S. Waltoś, like other proceedings’ scientists, distinguishes *an expertise* in two meanings – a strict and a wide one but comprehends its differently than e.g. Z. Kegel or M. Lipczyńska. Next to the author in the first meaning *an expertise* are examinations performed by an expert but in the second – wide – one besides examinations there is an expert’s opinion, too. About *an expertise* in a strict meaning says the Art. 194 Item 1 of the Code of Penal Proceedings (*performing an expertise*) and in a wider meaning the Art. 198 § 3 of the Code of Penal Proceedings (*scope of an expertise*)².

On ground of the Polish science of criminalistics one can find more detailed considerations referring to the concept of *an expertise* as well as its handling. Here as follows, the majority of authors by *an expertise* understands a set of investigative acts, which requires special knowledge and for that reason being performed by an expert on order of a procedural organ as well as completed by an opinion, which could be of an evidential character in the lawsuit³.

Referring to the above presented definition, T. Hanausek by a set of investigative acts understands such elements, which decide about specificity of every kind of *expertise* as well as such, which constitutes a certain system, say an ordered and a purposively directed set of definite acts, which decide about the matter and functional efficiency of a given *expertise*. Criteria of this ordering and directing result above other from a given domain of science, which delivers special necessary knowledge to perform a definite *expertise*. Besides they are determined also by its subject and scope⁴.

In particular, to the scope of acts included into the contents of *an expertise* belong:

- introductory analysis of material to be designed for examinations as their first stage;
- acquisition of comparative material or participation of an expert in acts of procedural organs aiming to an acquisition of this material. This act should be undertaken when together with an expertise’s order we will not get any comparative materials or this material is inappropriate to undertake examinations;
- particular inspection of comparative material as well questioned one;
- identification examinations, which are in application of defined methods, as a result of which you may establish identity or divergence among questioned and comparative material;
- other examinations, especially appropriate for this domain, which had delivered special knowledge, indispensable to perform a given proceedings’ act, e.g. physical and optical (absorption, luminescence) or chemical (chromatography) in performing documents’ expertise in the technical framework;
- investigative (specialistic) experiments, which differ from proceedings’ experiments.

Specifying differences one should indicate both distinctive natures in subject same as in the investigative method. One should also add that investigative experiments made in framework of *an expertise* do not form an independent proceedings’ act but they are being performed in the framework of *an expertise*. They are being made with the help of a definite investigative, methodics, an appropriate one for this discipline of science, in the framework of which one carries out an evidential act⁵.

¹ M. Siewierski, J. Tylman, M. Olszewski, Postępowanie karne w zarysie [Penal Proceedings In An Outline], Warsaw 1971, p. 153.

² S. Waltoś, Proces karny. Zarys systemu [Penal Proceedings. An Outline Of The System], 4th ed., Warsaw 1998, p. 378.

³ T. Hanausek, Ekspertyza kryminalistyczna [An Expertise In Criminalistics] [In:] Zeszyty Naukowe ASW [Scientific Fascicles Of The Academy Of The Interior], Vol. 1973, No. 1, p. 90; conf. Czeczot, Czubalski. Zarys kryminalistyki [An Outline Of Criminalistics], p. 241; W. Gutekunst, Kryminalistyka [Criminalistics], Warsaw 1965, p. 283; P. Horoszowski, Kryminalistyka [Criminalistics], Warsaw 1958, p. 595; Z. Kegel, Niektóre procesowe... [Some Proceedings...], p. 73; H. Kotecki, Określenie przedmiotu ekspertyzy w postanowieniu o powołaniu biegłego [Denomination Of An Expertise’s Subject In The Decision For The Appointment Of An Expert], „Państwo i Prawo” [State And Law], Vol. 1974, No. 8-9, p. 181; and the others.

⁴ Ibid., p. 90.

⁵ Conf. Hanausek, op. cit., pp. 90-91 as well as a justified explanation, which was included in the sentence of the Supreme Court from Apr. 20, 1988 I KR 174/88 (OSNKW [Orzecznictwo Sądu Najwyższego, Izba Karna i Wojskowa – Supreme Court Jurisdiction, Penal And Military Chamber], Vol. 1988, Fasc. 11-12, Item 84), which sounds as follows: “A specialistic experiment cannot be identified with a proceedings’ experiment and an inspection that had been performed by a procedural organ in the framework of the Art. 185 and 186 of the former Code of Penal Proceedings. A main feature to distinguish a proceedings’ experiment from a specialistic one is that an experiment performed in the evidential proceedings by a court and other procedural organs is *sensu stricto* a procedural act, notwithstanding a specialistic experiment does not have such a quality; it is a component part of an expert’s expertise. The second feature to distinguish these acts refers to subjects, which carry out

In the farther part of a discussed definition we meet a, worth to notice, expression as “specialistic knowledge”, which on one hand exceeds the knowledge of an average man and on the other hand they are indispensable to state definite circumstances, which are essential for a given matter.

Confirmation of so-understood *specialistic knowledge* we find also in the jurisdiction of the Supreme Court¹.

A following expression included in the contents of a definition are *acts performed by an expert* as well as *acts performed on order of a procedural organ*. Contents and scope of a concept of an expert in great measure are pointed out by an element of *specialistic knowledge*, i.e. an ability to fulfill an expert's function at the proceedings is depending above all on having by a certain person *specialistic knowledge*, which is necessary to state essential circumstances in a definite case². An expertise is being performed on order of a procedural organ for needs of concrete proceedings. According to the contents of the valid Code of Penal Procedure (Art. 194) such an order must have a form of a decision to be issued by a procedural organ while there are circumstances, which statement has a crucial influence on a decision on a case.

Investigative acts are completed by an opinion, which may be delivered orally or written way (Art. 200 § 1 of the Code of Penal Procedure). In practice it has been accepted that seeing a complicated character of expertises a document from their course is delivered in a written form though an oral one is not to be wholly eliminated. That is often applied in cases of the so-called abstract opinions.

According to T. Hanausek an expert's opinion should be consisted of two parts:

- report wherein an expert describes all acts and observations he or she performed in the framework of the performed examinations;
- as well as conclusions, which should be based on the performed examinations and result from observations made by an expert³.

Z. Kegel states but: “by a term of an opinion one understands only a judgement of an expert about an examined problem. In this meaning an opinion are only conclusions achieved by an expert. But a description of performed acts as itself and made observations as well as justification of the results of examinations is included to a report. In this formulation *a sensu stricto expertise* is consisted of three parts: examination, report, and opinion⁴.

An expert is a personal evidential source and his or her opinion is a means of evidence. You should distinguish a specialist from an expert⁵ who only delivers technical help at performing acts or at making observations by a procedural organ. His or her role resolves itself e.g. into facilitating to acquire material means of evidence to act's executors, detection of clues, suitable protection, and filing on this way the gathered data, carrying out an illustrative documentation to different type expertises, performing auxiliary acts in the framework of expertises being done (measurements, diagrams, etc.).

The summons of a specialist does not need to issue a decision by a procedural organ. A specialist does not also deliver an opinion and when it is needed is being heard as a witness (Art. 206

examinations. A specialistic experiment is carried out by experts of various special lines but a procedural experiment is an act of a proceedings' organ, which carries out the proceedings”.

¹ Hanausek, op. cit., pp. 91-92, the legislator states also in the Art. 195 of the Code of Penal Procedure: “To fulfil expert's acts is obliged not only a judicial expert but also every person about whom it is know that he or she has proper knowledge in a given domain.” (Dz.U. [Dziennik Ustaw - Government Regulations and Laws Gazette] from Aug. 4, 1997, No. 89, Item 555). Precious remarks on it were placed by Z. Doda and A. Gaberle, Dowody w procesie karnym. Orzecznictwo Sądu Najwyższego. Komentarz [Proofs In The Penal Lawsuit. Jurisdiction of the Supreme Court. Commentary], Vol. 1, pp. 79-80. It raises no objections a thesis of the Supreme Court, which is included in the sentence from Apr. 15, 1976, II KR 48/76 (OSNKW [Orzecznictwo Sądu Najwyższego, Izba Karna i Wojskowa – Supreme Court Jurisdiction, Penal And Military Chamber], Vol. 1976, Fasc. 10-11, Item 133), which sounds: “To the specialistic knowledge, which concept uses the Art. 176 § 1 of the former Code of Penal Procedure, does not belong this knowledge, which is accessible to an adult man with a suitable life experience, a store of general knowledge” in: Doda, Gaberle, op. cit., Vol. 1, p. 81 as well as the Supreme Court from Nov. 23, 1982, II KR 186/2, OSNPG [Orzecznictwo Sądu Najwyższego, Generalna Prokuratura – Supreme Court Jurisdiction – The General Public Prosecutor's Office], Vol. 1983, No. 5, Item 59.

² Hanausek, op. cit., p. 92; conf. Also II Akz 191/98, KSZ 1998, No. 12, Item 37 as well as the sentence of of the Supreme Court from May 3, 1982, I KR 319/81, OSNPG, Vol. 1984, No. 12, Item 112, sentence of the Supreme Court from Apr. 1, 1988, IN KR 281/87, OSNKW, Vol. 1988, No. 9-10, Item 69.

³ Hanausek, op. cit., p. 92; Kalinowski, Zagadnienia procesowe ekspertyzy w stadium postępowania przygotowawczego [Procedural Problems Of An Expertise At The Stage Of Preparatory Proceedings], „Problemy Kryminalistyki” [Problems Of Criminalistics], Vol. 1971, No. 94, pp. 788-789.

⁴ Z. Kegel, Ekspertyza... [An Expertise...], pp. 131-132.

⁵ A person of a *specialist* as well as tasks belonging to him or her in the framework of individual procedural acts the Polish legislator placed in the Art. 205 and 206 of the Code of Penal Procedure.

§ 2 of the Code of Penal Procedure). Also the Art. 200 § 3 of the Code of Penal Procedure *expressis verbis* states that in the case of participating at the course of an expertise of the other persons than these who has issued an opinion, e.g. at performing technical acts in the framework of an expertise then these ones may be heard as witnesses.

The most often *an expertise* is performed for the needs of a concrete lawsuit. In the doctrine of criminalistics as well as in practice occurs a term of a *criminalistics' expertise*, too. This is a kind of expertise and one of domains of a widely understood forensic expertise¹.

T. Hanausek defines it as follows: "A criminalistics expertise is a set of investigative acts, which requires specialistic knowledge above all from the domain of criminalistics and for that reason being performed by an expert in criminalistics as well as completed by an opinion, which consists of a report and results that may have a character of evidence in a lawsuit"².

To typical *criminalistics' expertises* in a strict meaning of this word one includes e.g. a dactyloscopic, documentary, mechanoscopic, fire-arms', traseologic, and polygraphic expertise³.

Notwithstanding, these *expertises*, which were performed at using knowledge from other domains of science one includes into the criminalistics' ones *sensu largo*. To the most often occurring in practice one includes:

- some chemical expertises,
- some physical expertises,
- some biological expertises,
- some anthropological expertises,
- some toxicological expertises.

Being a dynamic science and constantly developing, criminalistics unusually swiftly adapts to its needs the methods and means, which are applied by other scientific disciplines. Thanks to it a boundary between a criminalistics' expertise *sensu stricto* and *sensu largo* become obliterated⁴.

In the doctrine of criminalistics appears also a third type of criminalistics' expertises – *in statu nascendi* – that is such, which are situated near a boundary between experts *sensu stricto* and criminalistics experts *sensu largo* when we approach to the expertises in the first formulation. That refers the most often new expertises such as e.g.:

- osmologic expertise (of odours) and other aromatic clues,
- complex expertise of road accidents,
- expertise in physiodetection⁵.

To the notions presented by T. Hanausek assumes himself Z. Kegel stating that: "An expertise, being always in principle a procedural act, is at the same time an act of criminalistics..." as well as "... expertises, which are performed basing on knowledge of psychiatry, psychology, forensic medicine same as every other knowledge [...] are to be recognized as of criminalistics' character". Justifying furthermore he writes: "There are though evidential acts and not seeing what discipline of knowledge one uses aiming to their correct performance, they tend always towards the same purpose. This purpose is learning the objective truth and general rules of these expertises' performance are defined by criminalistics' tactics"⁶.

Also in the further part of this author's work one can notice a defense of such formulated theses and namely: "rules, to which should suit: a decision about an appointment of an expert, a report from the examinations, examinations' documentation, an opinion – independently from a kind of an expertise have been introduces especially by scientists in criminalistics" as well as "[...] specificity of the science of criminalistics consists mainly in it that in a greater grade to other disciplines of science adapts for its needs the achievements of other sciences (chemistry, physics, medicine). You are not allowed though to forget that in the framework of criminalistics own research is carried out such as chemical, physical ones, etc., which are led at an angle of a defined purpose [...]. In connection with it is sometimes difficult to decide univocally if a given expertise from the point of view of an applied within discipline of science you should include to a criminalistics' or then a chemical expertise"⁷.

¹ Czeczot, Tomaszewski, Kryminalistyka ogólna [General Criminalistics], Toruń 1996, p. 203.

² Hanausek, op. cit., pp. 94-95.

³ Id., Kryminalistyka. Zarys wykładu [Criminalistics. An Outline Of A Lecture], 3rd ed., Cracow 2000, pp. 161-162.

⁴ Id., Ekspertyza... [An Expertise...], p. 96.

⁵ Id., Kryminalistyka... [Criminalistics...], p. 162.

⁶ Z. Kegel, Ekspertyza... [An Expertise...], p. 14.

⁷ Ibid., pp. 59-60.

And consequently a *criminalistics' expertise* is distinguished from other expertises above all by an essential factor that is a character of specialistic knowledge, which is necessary to carry out such an act¹.

Some disciplines of specialistic knowledge, which is used both in the scope of such expertises – assumed by T. Hanausek as of criminalistics' nature – as e.g. an expertise of documents and in the framework of e.g. toxicological expertise. A mentioned expertise of documents and, more concrete way, one of its kinds – an expertise of bedding and covering means – is being carried out the most often by chemical, physical and optical, or also physical and chemical methods. From there is resulting a correctness that to perform such an expertise specialistic knowledge in chemistry as well in physics are necessary².

Translated from Polish by Grzegorz Pisarski



Teismo ekspertizė Lenkijos baudžiamojo proceso ir kriminalistikos doktrinoje

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Pagrindinės sąvokos: ekspertizė, specialios žinios, kriminalistika, baudžiamasis procesas.

SANTRAUKA

Nors ekspertizės sąvoka Lenkijos teisinėje literatūroje ir teismo praktikoje vartojama jau seniai, tačiau šalyje iki 1969 m. veikusiam Baudžiamojo proceso kodekse ekspertizės skyrimas nebuvo reglamentuojamas.

1997 m. įsigaliojusiam Baudžiamojo proceso kodekse ekspertizės terminas apibrėžiamas 194 ir 198 straipsniuose. Ekspertizė minima ir kituose baudžiamojo proceso straipsniuose: specialisto išvada (193 str., 194 str., 200 str.), tyrimas (198 str.), psichinio ligonio stebėjimas (203 str.), apžiūra (207–210 str., 212 str.), lavono skrodimas (209 str.), procesinis eksperimentas (211 str.).

Straipsnio autorius atkreipia dėmesį į tai, kad prieš nagrinėjant ekspertizės sąvoką kriminalistikoje ir baudžiamajame procese turi būti išnagrinėtos specialių žinių, tyrimo ir specialisto išvados sąvokos.

Straipsnyje pateikiamos lenkų mokslininkų Z. Kegelio, Z. Czczoto, M. Czubalskio, S. Sliwinskio ir T. Hanauseko išsakytos pažiūros ekspertizės klausimu.

Autoriaus nuomone, ekspertizė susideda iš dviejų dalių: tyrimo, kuris apima apžiūrą, suvokimą ir stebėjimų aprašymą ir tyrimo rezultatų ataskaitos, kuri gali būti pateikta žodžiu arba raštu. Nepriklausomai nuo ataskaitos pateikimo būdo, turi būti nurodyti taikyti stebėjimo metodai. Tyrimo metu padarytos išvados gali būti pateiktos ir kaip specialisto išvada.

Straipsnyje pateikiamos Lenkijos mokslininkų išsakytos nuostatos dėl specialių žinių termino apibrėžimo.

Nagrinėjama Lenkijos baudžiamojo proceso kodekse reglamentuota eksperto ir specialisto procesinė padėtis.

Autorius išsako savo nuostatą ekspertizų klasifikavimo klausimais ir pateikia savo ekspertizų klasifikaciją.



¹ Conf. Hanausek, Ekspertyza... [An Expertise...], p. 95.

² Conf. Z. Kegel, Ekspertyza... [An Expertise...], p. 60.