

QUALIFICATION CONTROL OF EXPERTS IN POLAND

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In the forensic practice there are be noticed many examples towards expert appraisements that belong to proceedings' activities to make not meager difficulties in the carrying out and appreciation. For that reason in all Polish procedural law there is a talk on special news, which ones indeed are useful to perform definite evidence activities to require an appointment of experts.

From the formal point of view in Poland we distinguish several categories of experts and namely: forensic experts registered at provincial courts, proficient employees of scientific institutions, connoisseurs employed at Police units such as: the Central Criminalistics' Laboratory of the Police Headquarters, voivodship police headquarters, experts of the other institutions of widely understood prosecution agencies, e.g. of the Military Police, Boundary Guard, experts employed at the institution of the Ministry of Justice("Prof. Jan Sehn" Institute of Forensic Expertises in Cracow), experts employed by private firms as well as experts who are appointed *ad hoc*.

Qualification control depending on a category whereto an expert "belongs to" proceeds differently.

An activity constitution of a forensic expert establishes the Ordinance of the Minister of Justice from June 8, 1987 on forensic experts and sworn translators; wherefrom it results that n expert to be able at fulfillment his or her function has to satisfy definite conditions to:

- have the Polish citizenship as well as use full civic and citizenship rights;
- be of the completed age of 25 years;
- have both theoretical and practical special knowledge of a definite discipline;
- give a warranty o a proper carrying out forensic expert's duties as well to be of a unblemished character;
- be agreed to be got appointed for an expert.

Having theoretical and practical special knowledge must be supported by suitable documents, which state his or her theoretical and practical experience in scope of a given domain of knowledge. Such documents are undoubtedly: study completion diplomas; certificates of courses and trainings done; documents, which corroborate a practice that was done at a given special line.

Forensic experts are established by a provincial court's chairman for the period of 5 years. Lists of experts who are established at a given provincial court are published at the beginning of a calendar year and then they are made accessible for proceedings' organs, which let an expert's opinion's evidence as well as the other participants depending on a

stage of proceedings. These lists are admissible also at district courts as well as at the Ministry of Justice.

That is to be stressed that a provincial court's chairman as a subject having power at enrolment into the list of experts is obliged to examine whether an applying person is satisfying definite requirements.

In relation to experts who apply for a repeated enrolment to the list after five-year term a court's chairman is obliged to check whether this person with his or her qualifications as well as with his or her hitherto existing co-operation with a proceedings' agency responses to made demands.

The above mentioned regulations are, alas, general instructions only, which don't define accurately in particular what qualifications should have a person who apply for the enrolment to the list of forensic experts in a given special line, they aren't explicit about a way of particular verification by provincial courts' chairmen of special knowledge being possessed by him or her.

A following group of experts form the people who are appointed in an *ad hoc* process. As in the first case a proceedings' decisive organ uses a list of forensic experts who had to pass a qualification procedure as much in case of the *ad hoc* appointed experts such an opportunity doesn't exist.

It isn't possible both to disqualify *a priori* the competences of such experts because a legislator in the Article 195 of the Code of Penal Procedure is stating clearly that "to the fulfillment of expert's activities not only a forensic expert is obliged but also every other person to be known to have a suitable knowledge in this domain".

That is to be also added that from the point of view of proceedings' regulations the legislator don't introduce a division of opinions for better or worse ones from the point of view of their origins. It gives notwithstanding to a proceedings' agency the freedom in choice of appointed experts.

You should though mark that the legislator only in case of one category of experts directly referred to and in the Article 202 and 203 of the Code of Penal Procedure additionally in particular regulated a way of appointing as well as acting of experts and a qualifications' control of expert psychiatrists to give opinions on the psychiatric health state of an accused.

In practice it happens differently in this freedom in establishing experts. There are known then the cases, which demand to proceedings' decisive organs at establishing experts in an exact case to use in the first queue the aid of experts who are enrolled onto a court's list. So does state e.g. the internal regulation of performing official duties of particular the prosecutor's office organizational units where in the Article 118 we are reading that "an expert if established above all from the list being led by a court but *ad hoc* experts should be summoned besides an evident case of lack in enrollment onto the list specialists of a given domain, mainly in the situation when it will come to exclude a unique forensic expert in his or her special line when forensic experts issue contradictory opinions [4, p. 347–348]".

Aiming to elevate experts' qualifications as well as admitting them to giving opinions the only well trained, experienced, and warranting an ethical performance of their functions some vocational environments verify specialists by themselves. The Polish Criminalistics Association (PTK) is an example of that and the acting in its framework Bureau of Expertises control the level of criminalistics' opinions, which are issued by the PTK members. Another example is the Experts' Association of Motor Technology and Traffic, on which behalf experts do opinions in road accidents' cases [5, p. 18–19].

As assumed the opinions of scientific and specialized institutions should give to a proceedings' agency the warranty of high qualifications of experts.

Scientific institutions, in the framework of which expert's reports are carried out are above all academic units and especially chairs of criminalistics of the universities in: Wrocław, Warsaw, Katowice, Szczecin, Torun, and Poznań. A proceedings agency shows in decision the special line and qualifications of the people who are appointed to its feasibility. T. Tomaszewski is of an opinion that approval of suitable qualifications of people who execute research follows by the fact of their work at a scientific institution. As he states

further, possible summons of experts for hearing lets to verify their knowledge. The author pays at the same time attention to the fact that the only employment at such an institution doesn't guarantee suitable practical qualifications to issue an opinion yet. A qualifications' control of experts who issue opinion in a given domain happens e.g. by accomplishing definite research projects, publishing results of their research in scientific periodicals, acquiring scientific titles in a given domain, active participation at scientific conferences, etc. In such a situation the above postulates should be one of crucial criteria and qualifications' evaluation as experts [4, p. 351]. It's also worth of noticing that scientific institutions have the most often on their disposal corresponding technical subsidiaries in form of laboratories that are furnished with a specialist apparatuses to help the expert's work and assuring at the same time in many cases a suitable level of research.

Experts who issue opinions in the framework of specialist institutions, to which one include criminalistics' laboratories as well as experts' organizations, undergo a process of verification their qualifications twofold way(internal and external). In the first case throughout an internal mechanism, which is in training system and examinations to entitle laboratories, workers to issue opinions. An example of such verification is, an accepted at police criminalistics' laboratories and other police units, mood of obtaining and verifying to self-dependent working out expert's opinions and issuing them. That has been regulated by the Main Police Commander's decision No. 32/99 from March 9, 1999 and the Appendix No. 1 thereto. From this document's contents results that the Director of the Police Headquarters Central Criminalistics' Laboratory orders trainings and evaluation of work quality at criminalistics' laboratories in this scope with proper institutions. According to these requirements the right to issue opinions at the police laboratories may have got a person who has theoretical and practical knowledge in a given domain. As well, he or she rises own qualifications, is highly educated(with marking that in case of technicians in criminalistics at some special lines secondary education is requires). This person carried on at least a one-month practice at a section of criminalistics' technique and took part at a special training at the Central Criminalistics' Laboratory of the Police Headquarters(CLK KGP). Besides, he or she has performed, guided by an independent expert, a definite number of expertises' projects within the limits between 50 and 250; prepared a qualification stude under tutorship of a specialist who had been appointed by CLK KGP; took part at at least five court hearings in a role of an observer of self-dependant experts' interventions as well as has got positive notes of delivered works and trainings, practices, and examinations done. The CLK KGP Director is issuing a decision about capacity of self-dependent carrying out expertises by an expert but before that a candidate has to pass still a practical examination before a specially appointed commission for this purpose [4, p. 349].

On the other hand, an internal control system is first of all connected with an appreciation the level of giving opinions by the laboratory basing on international standards using the so-called *Proficiency Testing Program*, which purpose is, among others, establishing and maintaining the highest quality level of examinations, unification methodology of research as well as inculcating modern methods of research, and maintaining of a high level of experts' vocational proficiency, comparing results of analogous examinations being led at various institutions. The Advisory Committee of the American Association of Criminalistics' Laboratories Directors put under analysis the reports that had been sent by the program's participants and elaborates a so-called final report, which is then being sent to directors of institutions in criminalistics. Such an activity allows for an objective evaluation of quality of analyses that had been performed at a given laboratory as well as correctness of the process of concluding and giving opinions as they refer to world standards [6, p. 358]. Instead, a result of such an appreciation forms a ground to get the so-called Participation Certificate by a given laboratory. The purpose of such a system of managing by quality is not only acquirement the control over processes of giving opinions in the framework of performed expertises in criminalistics but the matter is also in possibility to file to proceedings' decisive organs that a quality control, and - in the aftermath - experts' qualifications, is being carried out in fact [7].

In the recent time, you have been able to notice a disquieting phenomenon, wherein lawsuit agencies in a larger level send provisions about admittance of an evidence from the expert's opinion to various private companies frequently having its seat at "garages near houses" wherein experts frequently having doubtful vocational qualifications render their services. Proceedings' agencies from many reasons, not paying attention onto qualifications of these experts and apparatuses' hinterland do order performing expert's opinions to such institutions seeing though a low cost of the opinions and short deadlines of their performances. The to present authors such cases are known where representatives of the firms offering in their scope of activities also the examination of documents who were asking for co-operation or straight for help because they hadn't been able to find an expert of a definite discipline, e.g. in the field of physical and chemical examination of documents, although they had mentioned in their tender: "<...> we perform complex examinations of documents". But anyway, these complex examinations seeing their special character demand a corresponding apparatuses hinterland not to afford to by such a private firm as well as knowledge of the highest level in – at least – several scientific disciplines, e.g. physics and chemistry as in case of examination of the documents' age.

In connection with the above, you should agree with postulates, which are expressed by majority of Polish criminalistics scientists, to endeavor a change of such state of matter because as T. Tomaszewski is writing: "further uncontrolled development of a phenomenon being described may lead to a loss from eyeshot the professional and ethical qualifications of the only expert and his or her personal responsibility for an issued opinion and to result lowering the level this form criminalistics' expertises" [4, p. 354].

Postulates proclaimed by Z. Kegel, who since the years already has been indicating the need of appointment at the Ministry of Justice the special examination commissions to check out knowledge of all candidates for experts, still haven't lived to see their realization. An examination before such commissions would have a rank of a state exam but admission of a candidate to it should have been anticipated by carrying out a definite training at a scientific institution or specialized unit under the tutorship of an expert. Scarcely passing of such an examination would entitle to an independent performing of expert's opinions [8, p. 52–54].



BIBLIOGRAPHY AND NOTES

1. **Government** Regulations and Laws Gazette. 1987. No. 18. Item 112 – is stating that forensic experts of separate branches of science, technology, art, handicraft, and other knowledge appointed at a voivodship court (actually a provincial one – a change was introduced by regulations of the Law from Dec. 18, 1998 on the change of the Law on the structure of public courts. – Government Regulations and Laws Gazette. 1998. No. 160, Item 1,064) by a chairman of this court (Item 1 and 2 of the regulation).
2. **The Law** being a Code of Penal Procedure from June 6, 1997 with latter changes.
3. **Statement** from Dec. 2, 2002, Verdict of the Supreme Court SN TU III KKN 318/00 LEX 74476. To accordance with the Article 202 Catch 1 of the Code of Penal Procedure expert psychiatrists are the only experts who are entitled to speak about psychiatric health of an accused. The appointment of another special line expert, e.g. a sexuologist, doesn't satisfy the above guideline. Only in conditions, which are defined in the Article 202 Catch 2 of the Code of Penal Procedure an other special line expert's opinion that has a character of auxiliary opinion may form an element of a complex opinion on the psychical health state of an accused. If in a case an evidence from a sexology expert had been admitted but motivation of this proceedings' decision showed univocally that there should have been well-grounded doubts as they had referred to an accused soundness of mind, then they should have been verified in a way, which was indicated in the regulation of the Article 202 of the Code of Penal Procedure, and according to a disposal of the Article 79 Catch 1 Item 3 of the Code of Penal Procedure an accused should have had a barrister who's participation

at a hearing in agreement with the Article 79 Catch 3 of the Code of Penal Procedure has been compulsory since that moment.

4. **Tomaszewski T.** Kwalifikacje biegłych wydających opinie kryminalistyczne // Problemy współczesnej kryminalistyki. – Warszawa, 2000. Vol. 3.
5. **Tomaszewski T.** Dowód z opinii biegłego w polskim procesie karnym. – Kraków, 1998.
6. **Tucholska-Lenart A.** Program kontroli biegłości zawodowej ekspertów kryminalistyki // Problemy współczesnej kryminalistyki / Pod red. E. Gruzy i T. Tomaszewskiego. – Warszawa, 2000. Vol. 3. P. 358.
7. **Tomaszewski T.** Kwalifikacje biegłych wydających opinie kryminalistyczne // Problemy współczesnej kryminalistyki. Pod red. E. Gruzy i T. Tomaszewskiego. – Warszawa, 2000. Vol. 3. P. 350-351; this way also **Tucholska-Lenart A.** Test biegłości zawodowej w kryminalistycznych badaniach DNA // Problemy współczesnej kryminalistyki / Pod red. E. Gruzy i T. Tomaszewskiego. – Warszawa, 1998. Vol. 2. P. 75–76 as well as by eadem, p. 357–359.



Ekspertų kvalifikacijos kontrolė Lenkijoje

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SANTRAUKA

Formaliuoju požiūriu Lenkijoje skiriamos kelios ekspertų kategorijos: teismo ekspertai prie apylinkės teismų; ekspertai mokslo institucijų darbuotojai; ekspertai, dirbantys policijos institucijose; ekspertai, dirbantys Teisingumo ministerijai pavaldžiose institucijose; privatūs ekspertai; ekspertai ad hoc bei kitų institucijų teisėsaugos ekspertai.

Ekspertų kvalifikacijos kontrolė priklauso nuo jų kategorijos ir gali būti vykdoma skirtingais būdais.

1987 metais birželio 8 d. priimtas Lenkijos teisingumo ministro potvarkis numato bendrus reikalavimus, keliamus teismo ekspertams bei prisiekusiems vertėjams.

Teismo ekspertai apylinkės teismo pirmininko nurodymu įrašomi į ekspertų sąrašą 5 metams. Įrašydamas ekspertą į teismo ekspertų sąrašą teismo pirmininkas privalo patikrinti, ar kandidatas atitinka keliamus reikalavimus.

Tačiau minėtieji dokumentai nepateikia konkrečių kvalifikacijos reikalavimų, keliamų kandidatams į teismo ekspertus. Jie nenumato ir ekspertų kvalifikacijos verifikavimo būdų.

Kai kurios institucijos, tokios kaip, pavyzdžiui, Lenkijos kriminalistų draugija, pačios rūpinasi savo specialistų kvalifikacijos kontrole.

Ekspertų, dirbančių specializuotose institucijose, tokiose kaip policijos kriminalistinės laboratorijos bei kitos ekspertų organizacijos, kvalifikacija tikrinama dviem būdais: vidiniu, t. y. apmokymų sistema bei egzaminai, suteikiantys teisę teikti eksperto išvadą, ir išoriniu, t. y. bendro institucijos ekspertinio lygio įvertinimas, remiantis tarptautiniais standartais (pvz., ekspertų profesionalumo testas Proficiency Testing Program).

Pastaruoju metu Lenkijoje paplito bauginantis reiškinys, kai vis dažniau atlikti ekspertizės dėl įvairių priežasčių pavedama privačioms firmoms, kurių ekspertų kvalifikacija dažnai kelia abejonių.

Siekiant užkirsti kelią tokio pobūdžio reiškiniams bei patobulinti ekspertų kvalifikacijos kontrolės procesą ne kartą buvo siūloma (prof. Z. Kegelio) prie Teisingumo ministerijos sukurti specialias egzaminų komisijas, kurios tikrintų visų kandidatų į ekspertus kvalifikaciją. Tačiau kol kas šis pasiūlymas lieka be atsako.

