

# Selected issues concerning expert witness and specialists in Polish penal proceedings and forensic science

RAFAŁ CIEŚLA

Department of Forensic Sciences  
Faculty of Law, Administration and Economics, University of Wrocław

While discussing the issues connected with the object of expert examination, primary attention should be focused on the expert witness<sup>1</sup>. The legislator did not define the notion of expert witness in the Code of Penal Procedure of 1997<sup>2</sup> — similarly as in the preceding acts determining penal procedures. The Code includes the following premise: “If determining the circumstances necessary for adjudicating on the case requires special knowledge, an expert witness or witnesses are consulted”<sup>3</sup>. Art. 195 of the same act states that an expert witness may be anyone who is known to possess appropriate knowledge in a given field. The legislator

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<sup>1</sup> S. Kalinowski, *Opinia biegłego w postępowaniu karnym*, Warsaw 1972, p. 116.

<sup>2</sup> Code of Penal Procedure of 6 June 1997, Dz.U. (Journal of Laws) of 1997, No. 89, item 555 (amended).

<sup>3</sup> Art. 193 § 1 Code of Penal Procedure of 6 June 1997, Dz.U. (Journal of Laws) of 1997, No. 89, item 555 (amended). Special premise accompanies psychiatric expert examination. In judicial proceedings a psychiatric examination may only be ordered by the court and by the prosecution in preliminary proceedings. At least two expert psychiatrists are appointed, which is stated by Art. 202 § 1 and § 2 Code of Penal Procedure. Upon the motion of expert psychiatrists an expert or experts (usually a psychologist) representing other fields are appointed to participate in expert examination. S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warsaw 2013, p. 385.

also failed to define the notion of expert witness in the latest amendment of the Code of Penal Procedure<sup>4</sup>, leaving the issue aside to be dealt with by the doctrine. It is noteworthy that a substantial change in the new legal order to be binding after 1 July 2015, and especially in terms of amended Art. 393 § 3, Code of Penal Procedure<sup>5</sup>, is the fact that it will be admissible to read during the trial all private documents drawn outside the scope of penal proceedings, including an opinion from private expert examination. However, a private expert opinion will not automatically become part of evidence, as this will depend on the president of the court, the chairperson or its bench<sup>6</sup>. It is worth remembering that the change in the Polish model of penal proceedings aims at increasing their contradictory character. The circle of subjects entitled to provide evidence as determined by Art. 167, Code of Penal Procedure, will also change<sup>7</sup>. The parties in the proceedings will be burdened with the task of ensuring a favourable judgement. This target assumption will render a court a disinterested arbitrator, who will be able to admit evidence *ex officio* only in justified cases<sup>8</sup>.

Both the doctrine of penal proceedings and forensic science define the expert witness as a person summoned by a judicial body to examine or observe certain circumstances, whose examination, assessment or explanation require special knowledge, and to submit their expert opinion upon completion of the observations or examination<sup>9</sup>.

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<sup>4</sup> Act of 27 September 2013 on amending the act — Code of Penal Procedure and selected other statutes, Dz.U. (Journal of Laws) of 2013, item 1247.

<sup>5</sup> *Ibid.*

<sup>6</sup> Art. 352 Code of Penal Procedure, Art. 368 Code of Penal Procedure. Act of 27 September 2013 on amending the act — Code of Penal Procedure and selected other statutes, Dz.U. (Journal of Laws) of 2013, item 1247. Cf. S. Waltoś, P. Hofmański, *op. cit.*, p. 383 and the enclosed annexe to the book *Podstawowe założenia wielkiej reformy procesu karnego roku 2015*, p. 637.

<sup>7</sup> Act of 27 September 2013 on amending the act — Code of Penal Procedure and selected other statutes, Dz.U. (Journal of Laws) of 2013, item 1247. S. Waltoś, P. Hofmański, *op. cit.*, p. 637.

<sup>8</sup> A. Podemska, 'Opinia biegłego w nowym modelu postępowania karnego', *Zeszyty Naukowe Towarzystwa Doktorantów UJ., Nauki Społeczne* 2014, No. 8 (1), pp. 39–40.

<sup>9</sup> S. Kalinowski, *op. cit.*, p. 116; T. Nowak, *Dowód z opinii biegłego w polskim procesie karnym*, Poznań 1966, p. 17; T. Tomaszewski, *Dowód z opinii biegłego w polskim procesie karnym*, Cracow 1998, p. 9; J. Grajewski, L.K. Paprzycki, S. Steinborn, *Kodeks postępowania karnego*, Warsaw 2010, p. 696.

The expert witness is a personal source of evidence, while the expert opinion constitutes evidence<sup>10</sup>. The literature also states that the expert witness in penal proceedings is a person possessing special knowledge, summoned in an appropriate form (a judicial decision) by a judicial body to submit an opinion<sup>11</sup>. The expert witness's skills and professionalism render him or her the only legally bound person to clarify the circumstances requiring special knowledge<sup>12</sup>.

Forensic scientists tend to subscribe to T. Hanausek's view that special knowledge "on the one hand transgresses the knowledge of an averagely intelligent and averagely educated person, but on the other hand it is indispensable for determining certain circumstances essential for a given case"<sup>13</sup>. W. Gutekunst's view does not differ substantially on the matter; he adds that it is essential to differentiate between an expert witness's special knowledge and legal knowledge. The author observes that special knowledge is such which transgresses the scope of legal knowledge. He also points out that anyone who has certain special knowledge may be an expert witness at any issue — except interpreting legal provisions<sup>14</sup>.

The Supreme Court also stated its position concerning special knowledge, ruling in one of its judgements that special knowledge does not include the knowledge accessible for an adult of appropriate life experience, education and general knowledge<sup>15</sup>.

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<sup>10</sup> S. Kalinowski, *Postępowanie karne. Zarys części ogólnej*, Warsaw 1963, p. 307; M. Lipczyńska, *Polski proces karny*, Warsaw-Wrocław 1971, p. 146; J. Sehn, 'Dowód z opinii biegłych w polskim postępowaniu sądowym', *Nowe Prawo* 1956, No. 3, pp. 25–26; S. Śliwiński, *Polski proces karny przed sądem powszechnym*, Warsaw 1961, p. 330; Z. Czeczot, T. Tomaszewski, *Kryminalistyka ogólna*, Toruń 1996, p. 204.

<sup>11</sup> S. Adamczak, 'Podmiot ekspertyzy', *Zeszyty Naukowe ASW* 1978, No. 19, p. 77. Cf. K. Witkowska, 'Biegły w postępowaniu karnym', *Prokuratura i Prawo* 2013, No. 1, p. 68. Cf. Art. 194 Code of Penal Procedure of 6 June 1997, Dz.U. (Journal of Laws) of 1997, No. 89, item 555 (amended).

<sup>12</sup> A. Czapigo, 'Rola biegłego a rola specjalisty w procesie karnym — aspekty praktyczne na tle rozważań modelowych', *Prokuratura i Prawo* 2000, No. 9, p. 103.

<sup>13</sup> T. Hanausek, 'Ekspertyza kryminalistyczna', *Zeszyty Naukowe ASW* 1973, No. 1, pp. 91–92.

<sup>14</sup> W. Gutekunst, *Kryminalistyka*, Warsaw 1974, pp. 281–282.

<sup>15</sup> Ruling of the Supreme Court of 15 April 1976, II KR 48/76, OSNKW 1976, No. 10–11, item 133, [in:] Z. Doda, A. Gaberle, *Dowody w procesie karnym. Orzecznictwo Sądu Najwyższego. Komentarz*, vol. 1, Warsaw 1997, p. 81.

It is noteworthy that if a case entails circumstances which require the use of special knowledge, the fact that a judicial body does have the required special knowledge in question at its disposal does not exempt it from appointing an expert witness<sup>16</sup>.

If determining circumstances requires special knowledge, they must be essential for resolving the case, which means that there is no need, nor is there even a possibility, of appointing an expert witness or witnesses if the circumstances are of marginal significance for the case<sup>17</sup>. However, a judicial body is obliged to enquire about all the circumstances which constitute the basis for the judicial decision on the case if determining such circumstances requires special knowledge<sup>18</sup>.

One has to agree with K. Witkowska that even if a judicial body has such special knowledge, the legislator demands that an expert witness is consulted, because the former cannot assume a double role, i.e. that of a judicial body and as a source of evidence. The issue is unequivocally settled by Art. 193 § 1, Code of Penal Procedure. Moreover, a judicial body cannot substitute for an expert opinion with other evidence, such as witness testimony even if the witness has special knowledge, documents or extrajudicial expert opinion<sup>19</sup>.

It follows from the above that creating objective criteria constituting a point of reference and enabling a judicial body to make a decision of appointing an expert witness is rendered impossible by the relative nature of the notion of special knowledge. On the one hand the development of education, culture and science has resulted in a significant increase of average intelligence and thus in the increase of the threshold where special knowledge begins. On the other hand this rapid progress of civilisation and profound specialisation of science brought about a perceptible need for judicial bodies to use ever more frequently the assistance of people of high qualifications<sup>20</sup>.

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<sup>16</sup> T. Tomaszewski, op. cit., p. 10; R. Jaworski, 'Pojęcie wiadomości specjalnych a zakres ignorancji sądu', [in:] *Problematyka dowodu z ekspertyzy dokumentów*, vol. 2, ed. Z. Kegel, Wrocław 2002, pp. 1002–1003.

<sup>17</sup> K. Witkowska, op. cit., p. 67.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., after: W. Grzeszyk, 'Rola opinii biegłego w postępowaniu karnym', *Prokuratura i Prawo* 2005, No. 6, p. 24.

<sup>20</sup> T. Tomaszewski, op. cit., pp. 9–10.

The doctrine perceives the need to appoint expert witnesses from two perspectives. The first is the specific character of the issue to be decided, while the other is the level of education and the nature of special knowledge indispensable for deciding on the issue in relation to average education, allowing for judicial guarantees which all parties in the proceedings are entitled to in view of the principle of contradictoriness<sup>21</sup>.

The binding Code of Penal Procedure does not settle the matter of precedence of conducting expert examination<sup>22</sup>. In Art. 193 § 1 of the Code the legislator states that a judicial body may consult an expert witness or witnesses and adds in § 2 of the same article that it may consult a scientific or specialist institution. In the latter case everyone involved in issuing an expert opinion should be named, which follows from Art. 200 § 2(2), Code of Penal Procedure. This premise testifies to the individual character of expert witness evidence and personal responsibility of each expert witness for his or her opinion<sup>23</sup>. The opinion should include the name and surname, scientific degree and academic title, specialisation and the professional position. K. Witkowska is right to emphasise that if the expert opinion is issued by a scientific or specialist institution, it does not necessarily follow from the regulations of the Code of Penal Procedure that apart from the signature of the expert witness, i.e. a person drawing the opinion, it should be endorsed by other people, such as the director of the institution<sup>24</sup>.

In practice, despite the absence of distinct regulations, judicial bodies frequently demand that an opinion is signed by the director of the institution where the expert examination has been conducted. The doctrine also tends to approve of the fact that expert opinions are endorsed by the directors of the institutions where the examination has been carried out. S. Waltoś and P. Hofmański state that even though the institution's director is no longer required to endorse the expert opinion, his or her signature certainly does not affect its validity. On the contrary, it is proof

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<sup>21</sup> Z. Kegel, *Dowód z ekspertyzy pismoznawczej w polskim procesie karnym*, Wrocław 1973, pp. 119–120.

<sup>22</sup> T. Grzegorzczak, *Kodeks postępowania karnego*, vol. 1, issue 6, Warsaw 2014, pp. 693, 699.

<sup>23</sup> K. Witkowska, op. cit., p. 67 after: W. Grzeszczyk, *Kodeks postępowania karnego. Komentarz*, Warsaw 2011, p. 215.

<sup>24</sup> *Ibid.*, p. 68.

that the director assumes responsibility for the functioning of the institution, which affects the validity of expert examination<sup>25</sup>. In order to admit expert witness evidence and appoint an expert witness a judicial body must issue a decision. This requirement is imposed by the legislator in Art. 194, Code of Penal Procedure. The decision must indicate the name, surname and specialisation of the expert witness or witnesses and in the case of an institution — if necessary — specialisations and qualifications of the people who should participate in expert examination, its object and scope, accompanied — if need be — by detailed questions and the deadline for submitting the expert opinion<sup>26</sup>.

Technical expert examination of documents, and especially examination of inks, frequently involves methods resulting in the damage of an examined document. This prevents an expert witness from repeating his or her examination and deprives a judicial body of the evidence essential for deciding on the case. For this reason the legislator distinguishes between the notions of object and scope of expert examination because it enables a judicial body to interfere with the examination methods implemented by an expert witness while conducting his or her examination<sup>27</sup>. T. Tomaszewski perceives the notion of object of expert examination from two perspectives. On the one hand he maintains that it is a specialist problem whose solution or explanation requires appointing an expert witness, whilst on the other hand he states that it is an object subjected to examination by an expert witness during his or her expert examination, on the basis of which it is possible to determine the circumstances requiring special knowledge<sup>28</sup>. The object of expert examination should be formulated in the basic question which a judicial body directs at the subject conducting expert examination, i.e. an expert witness. In the case of technical examination of documents such a question may be concerned with whether the signature and other entries on the document have been

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<sup>25</sup> S. Waltoś, P. Hofmański, op. cit., p. 84.

<sup>26</sup> K. Witkowska, op. cit., p. 68.

<sup>27</sup> Z. Kegel, 'O właściwe pojmowanie ustawowych pojęć "przedmiot" i "zakres" ekspertyzy', [in:] *Problematyka dowodu z ekspertyzy dokumentów*, vol. 2, ed. Z. Kegel, Wrocław 2002, p. 891.

<sup>28</sup> T. Tomaszewski, op. cit., p. 176.

made with the same ink, whether the entire document has been drawn in the same ink, or whether it was drawn at the date which it carries.

The fact of indicating the objects of examination in the decision on conducting expert examination cannot be considered an explicit decision allowing an expert witness latitude in the scope of his or her examination. The scope of expert examination is tantamount to determining the research limits which a judicial body sets to the expert witness in his or her examination. The scope of expert examination may also be used to determine the extent of examination to be conducted with respect to the principles determined by a given area of knowledge<sup>29</sup>.

Expert examination is a procedural act in legal proceedings and its course is always determined by a judicial body. The decision concerning the scope of expert examination understood as an extent of research is always made by a judicial body, which takes into consideration all the issues which need to be resolved during the legal proceedings. Ultimately it is a judicial body and not an expert witness which will decide on the method of examination<sup>30</sup>. Allowing an expert witness total latitude in the selection of the examination method may result in the damage and even complete destruction of evidence, such as a questioned document. However, Z. Kegel points out that in practice the scope of examination indispensable for issuing an opinion is determined by an expert witness, while he or she should seek permission from the judicial body in the cases when the examination methods might cause damage to or destruction of evidence<sup>31</sup>.

One has to agree with T. Tomaszewski, who approves of the fact that a judicial body does not determine a concrete method of examination for an expert witness as the very fact of its selection requires special knowledge and it is an expert witness who is responsible for its selection. An expert witness is entitled to relative autonomy. His or her selection of concrete examination methods, which in his or her opinion are the most

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<sup>29</sup> M. Cieślak, K. Spett, W. Wolter, *Psychiatria w procesie karnym*, Warsaw 1968, p. 373.

<sup>30</sup> Z. Kegel, *Ekspertyza ze stanowiska procedury i kryminalistyki*, Wrocław 1976, p. 81.

<sup>31</sup> Z. Kegel, 'O właściwe...', p. 893; also T. Tomaszewski, op. cit., p. 67.

appropriate for providing an answer to the questions set by a judicial body, may to a certain extent modify the object and scope of examination outlined in the decision on admitting expert witness evidence. This view does not contradict the principle of formal supervision of expert examination exercised by a judicial body because an expert witness cannot independently modify the determined object and scope of expert examination; neither can he or she determine it independently<sup>32</sup>. The object and scope of expert examination may ultimately be modified solely by a judicial body.

It should be emphasised here that in many cases expert examination may be conducted by specialised institutions, which have at their disposal appropriate teams of expert witnesses, specialist equipment and, last but not least, appropriate venues. A good example here is technical expert examination of documents, which frequently involves an analysis of inks carried out by highly qualified personnel with the use of specialist equipment. In such cases an ordinary microscope is insufficient and it is often necessary to conduct complicated spectral analyses with the use of specialist equipment, which is not easily available due to its highly specialist nature and substantial cost. In such cases an expert witness may require the assistance of a specialist, who will operate the equipment, make measurements, draw illustrations or process photographs. An expert witness, relatively autonomous in performing his or her examination, may make use of such a person's services<sup>33</sup>.

The issues discussed above inevitably raise the question of assessing expert witness's qualifications. A good example here is again provided by expert examination of documents, which frequently involves complex analyses as ordered by a judicial body. The analyses comprise handwriting examination and technical examination of documents, which requires special knowledge in the field of forensic science, certain medical sciences, optoelectronics, physics or chemistry, relative to the nature of the examination. Such cases very frequently require a coordinated effort of several expert witnesses representing various specialist areas.

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<sup>32</sup> T. Tomaszewski, *op. cit.*, p. 67.

<sup>33</sup> More on the institution of specialists further on in the article.

The term “expert witness” comprises several categories; an expert witness may be a person entered on a list of court expert witnesses, a specialist employed by a scientific or specialist institution, or an expert witness appointed ad hoc<sup>34</sup>. In practice a judicial body appoints expert witnesses from the lists available in common courts of law. In accordance with § 12.1 of the ordinance issued by the Minister of Justice on court expert witnesses<sup>35</sup>, a court expert witness may be a person who enjoys a full scope of civil and civic rights, is of minimum 25 years of age, has theoretical and practical special knowledge in a given field of science, technology, art, handicraft and other skills, guarantees appropriate conduct of expert witness’s duties and consents to being appointed an expert witness.

It should be emphasised here that the division into categories of expert witnesses quoted above does not constitute an attempt at passing a judgement on their qualifications even if the implementing act, i.e. the ordinance quoted above, regulates the issue of court expert witnesses constituting one of the categories mentioned above. Absence of judgement on expert witness’ qualifications also results from the judicial decisions of the Supreme Court, who stated that

a court may at its own discretion appoint as experts any persons from the list of court expert witnesses or persons from outside the list if they have appropriate professional and specialist qualifications in the field in question and if there are no reservations as to their impartiality. The long-standing view adopted by judicature makes no difference in the treatment and assessment of an expert opinion submitted by a court expert witness or another expert witness appointed by a judicial body for a given case<sup>36</sup>.

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<sup>34</sup> W. Kędzierski, ‘Biegli sądowi. Specjalności biegłych w praktyce sądów okręgowych’, [in:] *Problemy współczesnej kryminalistyki*, vol. 3, ed. T. Tomaszewski, E. Gruza, Warsaw 2000, p. 172; K.T. Boratyńska, A. Górski, A. Sakowicz, *Kodeks postępowania karnego. Komentarz*, issue 5, Warsaw 2014, p. 400; T. Grzegorzczak, op. cit., s. 699.

<sup>35</sup> Ordinance of the Minister of Justice on court experts of 24 January 2005 (Dz.U. (Journal of Laws) of 2005 No. 15, item 133).

<sup>36</sup> S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warsaw 2013, p. 384; Cf. ruling of the Supreme Court of 5 February 1974, III KRN 371/73, OSNKW 1974, No. 6, item 117, [in:] T. Tomaszewski, op. cit., p. 132; and Z. Doda, A. Gaberle, op. cit., pp. 91–92. Cf. ruling of the Supreme Court of 26 April 2006, WA 15/06, OSNwSK 2006,

The amendments of the Code of Penal Procedure from 2013, which came into force following 1 July 2015 may change the situation outlined above, especially in terms of assessment of competences of expert witnesses appointed by a judicial body to conduct expert witness examination whose results constitute evidence admissible by court<sup>37</sup>. There have recently been demands of certification of expert witnesses and enacting a separate law on expert witnesses, codifying their activity. So far no such legal act has been adopted in Poland even though legislative work aimed at creating an act on court expert witnesses is continuously being conducted<sup>38</sup>.

A specialist plays a significant role at all stages of legal proceedings. For many years this role was played by forensic technicians, who revealed traces at the scene of the crime, made measurements, and took specialist photographs (also for the needs of expert examination of documents). However, their activity had no distinct authorisation in the Code of Penal Procedure and they were treated as so-called assistants of the assistants in the proceedings, who were summoned to help in conducting proceedings to take evidence which requires extra-legal knowledge, usually technical, to be carried out appropriately<sup>39</sup>. The situation changed in 1997, when the legislator introduced into the Code of Penal Procedure the institution of a specialist<sup>40</sup>.

As follows from procedural regulations, the term “specialist” is a statutory notion reflected in the provisions of Art. 205 and 206, Code

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No. 1 item 910; T. Grzegorzczak, J. Tylman, *Polskie postępowanie karne*, Warsaw 2014, p. 515.

<sup>37</sup> Act of 27 September 2013 on amending the Code of Penal Procedure and selected other statutes, Dz.U. (Journal of Laws) of 2013, item. 1247.

<sup>38</sup> Cf. a bill on court expert witnesses (Projekt ustawy o biegłych sądowych), <https://legislacja.rcl.gov.pl/projekt/259060>, access: 04.2015.

<sup>39</sup> Cf. Z. Kegel, ‘Specjaliści, ich status prawny i rola w czynnościach procesowych’, [in:] *Księga pamiątkowa ku czci profesora Józefa Wąsika*, ed. L. Bogunia, Wrocław 1999, p. 148.

<sup>40</sup> The Code of Penal Procedure of 6 June 1997, Dz.U. (Journal of Laws) of 1997, No. 89, item 555 (amended); The institution of a specialist is discussed in more detail by K. Browarny in the article: ‘Metody i środki wykorzystywane przez specjalistów w praktyce dochodzeniowo-śledczej’, [in:] *Innowacyjne metody wykrywania sprawców przestępstw. Materiały z konferencji*, ed. M. Szostak, I. Dębowska, Wrocław 2014, pp. 11–26.

of Penal Procedure<sup>41</sup>. The notion of specialist may be associated with a person who has special knowledge, which in penal proceedings is usually connected with the function of expert witness. T. Taracha points out that before the Code of Penal Procedure was introduced in 1997, the notion of specialist was on the one hand applied to the people performing technical functions, e.g. forensic technicians, while on the other it was used in the case of people who had special knowledge but had not yet been formally appointed as expert witnesses. Quite fortunately, in the binding Code of Penal Procedure the meaning of the notion of specialist has been significantly narrowed down. A specialist may appear in penal proceedings as an assistant in the proceedings, i.e. a person who handles technical aspects of taking evidence and as a source of evidence when he or she is interrogated as a witness in the proceedings in which he or she participated. Division of participants in the proceedings into judicial bodies, parties in litigation, sources of evidence and assistants in the proceedings is by no means mutually exclusive. Some of these roles may be combined, which refers to a specialist and his or her role as an assistant in the proceedings as well as sources of evidence, when appearing as a witness. The fact that a specialist may be interrogated as a witness results directly from the provision of Art. 206 § 2, Code of Penal Procedure<sup>42</sup>. Both a judicial body and an expert witness<sup>43</sup> are the subjects authorised to summon a specialist. In practice a specialist who has carried out technical activities during expert examination of documents may consequently be interrogated as a witness. It should be emphasised that both an expert witness and a specialist are not in each case automatically summoned for an interrogation. The decision to interrogate is in each individual case made by a judicial body, who — when making such a decision — may

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<sup>41</sup> A. Taracha, 'Instytucja specjalisty w polskim procesie karnym. Zagadnienia prawnodowodowe', [in:] *Aktualne tendencje w badaniach dokumentów*, ed. Z. Kegel, Wrocław 2010, p. 504.

<sup>42</sup> Ibid., p. 505. Cf. K. Dudka, 'Charakter prawny i rola specjalisty w polskim procesie karnym', [in:] *W kręgu teorii i praktyki prawa karnego. Księga poświęcona pamięci Profesora Andrzeja Wąska*, ed. L. Leszczyński, E. Skrętowicz, Z. Hołda, Lublin 2005, p. 696.

<sup>43</sup> K. Witkowska, op. cit., p. 77.

take into account a motion to carry out such an interrogation submitted by parties in litigation.

Specialists may be interrogated as witnesses because they do not submit evidence in the form of expert opinion<sup>44</sup>.

In view of the above a question arises whether requirements concerning qualifications of expert witnesses and specialists should be the same. Undoubtedly, expert witnesses should have exceptional theoretical knowledge in a given field, practical experience and high morale. Referring these criteria to all specialists would hardly be justified. Sometimes very good technical and practical knowledge, such as taking photographs, sketching, or filming is sufficient for a person to be appointed as a specialist. The literature points out that theoretical knowledge in the fields mentioned above is not necessarily a prerequisite for appropriate execution of a specialist's skills in these areas<sup>45</sup>. However, in certain circumstances appointed specialists have to possess qualifications equalling those of an expert witness<sup>46</sup>. It should be emphasised that when a judicial body seeks the assistance of a specialist whose qualifications equal those of an expert witness and a specialist who is not required to possess such qualifications, they are summoned to participate solely in order to provide assistance and never to provide evidence. Their role is limited to that of a consultant. Z. Kegel divides specialists according to two criteria. The first takes into consideration the extent of specialist knowledge, which enables distinguishing between the specialists possessing knowledge equalling that of expert witnesses and those who do not possess theoretical knowledge required from expert witnesses, but who — after all — possess special, exceptional practical knowledge. The other criterion takes into account formal requirements. A division according to formal criteria into the specialists who are the officials of judicial bodies and those who are not has been introduced by the legislator in the provision of Art. 202, Code of Penal Procedure<sup>47</sup>. The legislator decided that the same provisions of the Code of Penal Procedure are applicable in the case of

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<sup>44</sup> Z. Kegel, 'Specjaliści...', p. 148.

<sup>45</sup> Ibid., p. 150.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., p. 151.

both expert witnesses and specialists, with the exception of Art. 194, 197, 200 and 202, which are applicable only to the latter. A specialist becomes a participant in the proceedings not as a result of a decision made by a judicial body but when he or she is summoned. A specialist may be summoned by a judicial body to make a pledge, which is an optional requirement. The optionality is determined by Art. 205, Code of Penal Procedure, which states that only a specialist who is not an official of a judicial body may be summoned to make a pledge. The premise that a specialist's pledge is not obligatory is justified by practice. Quite frequently a specialist who is not an official of a judicial body has to perform his or her activities immediately after being summoned, when there may be no time to make a pledge<sup>48</sup>. It is obvious that with the development of technology the area of a specialist's competences will expand, while the number of functions to be performed will increase<sup>49</sup>. In practice a specialist's tasks include "mechanical recording" of the activities determined in Art. 205, Code of Penal Procedure, if summoned to do so<sup>50</sup>. Introduction of the institution of a specialist performing technical functions does not mean that the functions in question cannot be performed by a judicial body or another assistant in the proceedings<sup>51</sup>.

The activities performed with the participation of specialists, including preliminary consultations prior to a decision on conducting expert examination, are recorded in a report. The report should include the specialist's personal data, i.e. name and surname, specialisation, address, employment and professional position, and list the activities performed by a specialist and their scope. If proceedings to take evidence require participation of several specialists, the report indicates the type of activities performed by each specialist and their scope. In the case of expert examination of documents, the data concerning a specialist and detailed description of his or her contribution to expert examination are listed in the report on the examination. It is noteworthy that drawing of the report is supervised by the expert witness, who is responsible for the complete expert

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<sup>48</sup> Ibid.

<sup>49</sup> Dz.U. (Journal of Laws) of 1997 No. 89, item 555 (amended).

<sup>50</sup> A. Taracha, *op. cit.*, p. 511.

<sup>51</sup> Ibid., p. 512.

examination, including the activities carried out by specialists working under his or her supervision. An expert witness exercises relative autonomy in making decisions concerning the object of expert examination.

Appropriate use of the assistance of expert witnesses and specialists may contribute to the implementation of the principle of the economy of the proceedings and appropriate execution of the proceedings, including technical examination of documents<sup>52</sup>.

### Summary

The article aims at presenting general characteristics of two subjects in the proceedings, i.e. an expert witness and a specialist. Both institutions are discussed in terms of theory and practice of Polish penal proceedings and forensic science. The issues are especially important in view of the amendments to the Polish Code of Penal Procedure of 1997 concerning the institution of a specialist and the amendments of 2015 concerning an expert witness's opinion. It should be emphasised that in the course of the proceedings to take evidence, including technical examination of documents, cooperation between an expert witness as its author and a specialist as an assistant may in many cases be necessary or even indispensable.

**Keywords:** expert witness, specialist, Code of Penal Procedure, forensic science, technical examination of documents.

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<sup>52</sup> Cf. Z. Kegel, 'Specjaliści...', p. 153.