

The scientific aim of this project is to investigate the outstanding problems related to private expertise (private opinion), i.e. an opinion drawn up not on the basis of a law enforcement order but on behalf of a party. This issue will be analyzed against the background of the evolution of the Polish criminal process, in particular the changes in the Code of Penal Procedure made by amendments: of 23 September 2013 (which entered into force on 1 July 2015) and of 16 March 2016 (which entered into force on 15 April 2016), as well as in the light of European standards.

The issue of the use of private expertise in criminal proceedings will be analyzed on the basis of the Polish Code of Penal Procedure, taking into account two research hypotheses. The first one assumes that the introduction of the possibility of using a private opinion to the Polish criminal process is conducive to reaching the material truth. The second thesis subject to verification in the project will be the answer to the question whether the private expertise in current trial practice serves to level the chances between defense and accusation, and also enables victims to defend their justified interests in the penal proceedings. In the dogmatic sphere, however, in relation to the accused and his advocate, it should be examined whether the use of private opinion constitutes an element of the conventional and constitutional standard of effective defense and a fair trial. Therefore, the analysis covered both ECtHR judgments related to article 6, para. 3 and 1 of the ECHR as well as the jurisprudence of the Polish Constitutional Tribunal arising from article 42 par. 2 and article 45 par. 1 of the Constitution.

Bearing in mind the above, a specific problem arises against the background of the Polish Code of Penal Procedure, namely whether art. 393 § 3 of the Code of Penal Procedure regarding private evidence (including private expertise) is a regulation sufficient to achieve the objectives set for it, or whether it should be complemented by other provisions for its implementation with regard to private expertise.

The methodology of the research project is based on the following methods: analysis of Polish jurisprudence regarding private expertise and ECtHR jurisprudence related to article 6 par. 3 and 1 of the ECHR, dogmatic, legal and historical analysis, comparative legal analysis of legal solutions of other countries (England and Wales, Germany and Russia) and a questionnaire survey (concerning individual professional groups).

An analysis of the achievements of the Polish doctrine of the criminal process indicates the lack of representative research and literature relating comprehensively to the issues being addressed. Previous scientific studies in the field of private opinion, or private evidence in a broad sense in Polish proceedings, are only theoretical and doctrinal studies. The conclusions drawn in these studies have not been based on empirical research. In addition, the latest publications in the examined area do not include the recent changes of the legislator in 2016, who decided to restore a significant part of the regulations changed in 2013, giving up the criminal investigation model with increased adversariality, but retaining the provision of article 393, which concerns, among others, private expertise, unchanged.

Research in this area will support or undermine the arguments put forward by the authors of the studies devoted to private expertise. What is more, the research can show new solutions that so far have not been mentioned in publications devoted to this issue. Also, the analysis of Polish regulations in the field of private opinion in the perspective of European standards, as well as a comparison of regulations contained in the Polish Code of Penal Procedure with regulations included in criminal laws of other countries may lead to constructive conclusions regarding the completeness of art. 393 § 3 of the Code of Penal Procedure and the assessment made by the legislator in 2013 to amend this provision and to assist in the planning of possible future amendments to the Code of Penal Procedure.

The project has a theoretical and practical value. The results of individual research stages will be published in renowned national journals (included in the current ministerial publishing list) and international (at least 2 articles), publishing articles in the field of criminal proceedings.

The most important expected effect of the project, relevant to the representatives of science of criminal trials and law practitioners, will be the publication of a research report in Polish in the form of a peer-reviewed monograph (in a publication included in the ministerial list). It would have a chance to significantly enrich the Polish scientific literature in the field of criminal procedural law, because, as already indicated, there is a lack of a wider study on private expertise in Polish literature, and there are no studies based on research results.