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USELESSNESS OF AN EXPERT OPINION IN CASES OF THE NULLITY OF MARRIAGE BASED ON CAN. 1678 § 3 OF THE 1983 CODE OF CANON LAW

Abstract. The article attempts to answer the question: is the opinion of a court expert always necessary, or can it prove useless in certain types of cases or circumstances? It seems that there are situations from which it follows that under some circumstances the opinion of an expert will not contribute anything to the case. This is the case in reality, both when the judge is convinced of a negative sentence and when he or she is convinced of an *affirmative* sentence. Then the judge may waive the opinion of an expert with the proviso that this will not be detrimental to the party.

Keywords: marriage; opinion; expert; nullity

INTRODUCTION

In cases brought under can. 1095, 1°-3°, an expert opinion constitutes the principal means of evidence.[1] If an expert finds that the subject was afflicted by a severe mental disorder at the time of the wedding, it is very likely that the sentence will be to declare the nullity of the marriage of the parties concerned. However, what if the circumstances and evidence clearly contradict the nullity of the marriage or, on the contrary, if it is clear from the evidence gathered that the marriage was invalid? The question thus arises as to whether it is necessary to use an expert's service or can the president of a collegiate

[1] Cf. S. PAŻDZIOR, *Przyczyny poważnego braku rozeznania oceniającego w świetle kan. 1095 n. 2*, Lublin 2004, p. 50.

tribunal consider an expert opinion useless, as the legislator says in can. 1678 § 3 of the 1983 Code? And, most importantly, is such a decision, when rendered by a sole judge, not in some sense equal to a sentence passed by a collegiate tribunal? Does the presiding judge have the right to decide that an expert opinion is useless?

1. THE NECESSITY OF AN EXPERT OPINION

The legislator, in can. 1574, states that "the assistance of experts must be used whenever the prescript of a law or of the judge requires their examination and opinion based on the precepts of art or science in order to establish some fact or to discern the true nature of some matter." At the same time, can. 1678 § 3 provides that "in cases of impotence or defect of consent because of mental illness or an anomaly of a psychic nature, the judge is to use the services of one or more experts unless it is clear from the circumstances that it would be useless to do so." It is worth noting already at this point that a judge may refrain from consulting an expert's service if it is clear from the circumstances that it would be useless. Nevertheless, in other cases the prescript of can. 1574 is to be observed.

The 2005 procedural instruction *Dignitas connubii* (DC) states in art. 203 § 1 that "in causes concerning impotence or a defect of consent because of a *mentis morbum* or because of the incapacities described in can. 1095, the judge is to employ the assistance of one or more experts, unless from the circumstances this would appear evidently useless."[2] Why is an expert opinion necessary or at least useful? In cases brought under the titles prescribed in can. 1095, for the judge is to determine whether or not the subject was affected by some mental disorder at the time of the wedding. The question thus arises as to whether this disorder, which may have existed, impacted the functioning of his mind, consciousness, and will. In this context, it is pertinent to ascertain whether the potential disorder precluded him from fulfilling the duties of marriage. The question thus arises as to the nature of an expert opinion. In what circumstances is it necessary to obtain an expert opinion in cases of nullity marriage.

[2] Cf. Pontificium Consiliumde Legum Textibus, Instructio servanda atribunali-bus dioecanis et interdioecesanis in pertractandis causis nullitatis matrimonii 25.01.2005, Communicationes 37 (2005), p. 11–92, art. 203 § 1; English text available on the Vatican website.

2. THE SUBJECT OF THE EXPERT OPINION

The judge's use of expert opinion introduces into the process the necessity of initiating a dialogue between science and law.[3] Although the aforementioned dialogue is not easy, as numerous allocutions by successive popes have shown,[4] including John Paul II's allocutions to the auditors of the Roman Rota of 5 February 1987[5] and 25 January 1988,[6] nevertheless, it is a necessary dialogue. According to Zenon Grocholewski, the remarkable advancements in psychological and psychiatric sciences render a judge presiding over a marriage nullity case incapable of accurately assessing the health status of a contracting party affected by a specific disease or mental anomaly.[7] Therefore, John Paul II states in his allocution of 26 January 1984 that the assistance of an expert in this regard is indispensable.[8] According to the allocution of 5 February 1987, he asserted that it is possible to undertake a comprehensive and reliable assessment of a man and to evaluate his response to the vocation to marriage in a more profound manner than could be achieved through the use of philosophical and theological approaches alone.[9]

In selecting an appropriate expert, the judge must consider most of all the expert's technical and scientific background but also their honesty and impartiality.[10] While some authors contend that an understanding of canonical terminology impedes the ability to offer an objective perspective, it is nevertheless a valuable asset. On the other hand, it is important that the expert, in giving an opinion, takes into account the principles of Christian anthropology

[3] Cf. Sent. coram Boccafola, 1.04.1993, RRD 85 (1993), p. 274.

[4] Cf. PIUS XII, Allocutio adstantibus Praelatis Auditores, 3.10.1941, AAS 33 (1941), p. 421-426; PAULUS VI, Allocutio ad Praelatos Auditores, 12.02.1968, AAS 60 (1968), p. 202-207; JOANNES PAULUS II, Allocutio ad Praelatos Auditores, 26.01.1984, AAS 76 (1984), p. 643-649.

[5] Cf. JOANNES PAULUS II, Allocutio ad Rotae Romanae Auditores, 5.02.1987, AAS 79 (1987), p. 1453-1459.

[6] Cf. JOANNES PAULUS II, Allocutio ad Rotae Romanae Auditores, 25.01.1988, AAS 80 (1988), p. 1178-1185.

[7] Cf. Z. GROCHOLEWSKI, *Il giudice ecclesiastico di fronte alle perizie neuropsichiatriche e psicologiche*, "Apollinaris" 60 (1987), p. 185.

[8] Cf. JOANNES PAULUS II, Allocutio ad Praelatos Auditores, 26.01.1984, p. 648: "la preoccupazione di salvaguardare le dignità ed indissolubilità del matrimonio, mettendo un argine agli abusi ed alla leggerezza che purtroppo si devono frequentemente lamentare in questa materia, non può far prescindere dai innegabili progressi delle scienze biologiche, psicologiche, psichiatriche e sociali; in tal modo, si contraddirebbe il valore stesso che si vuol tutelare, che il matrimonio realmente esistente, non quello che ne ha solo la parvenza, essendo nullo in partenza."

[9] Cf. JOANNES PAULUS II, Allocutio ad Rotae Romanae Auditores, 5.02.1987, p. 1455.

[10] Cf. B. GIANESIN, *Perizia e capacità consensuale nel matrimonio canonico*, Padova 1989, p. 102; G. VERSALDI, *L'oggettività delle prove in campo psichico*, Brescia 1981, p. 193.

and the teaching of the Church on the subject of marriage.[11] It is not always the case that scientific declarations can reconcile the secular view of a person with the tenets of the Church.[12]

It should be noted already at the beginning that the questions posed by the judge to the expert cannot require the latter to make a legal judgement as to the consensual capacity of the subject, as mentioned in can. 1095, 1°-3°. Instead, the judge should relate to the psycho-physical structure of a person, with particular reference to his or her intellectual and volitional spheres.[13] The expert, in turn, in accordance with art. 209 § 3 DC, is to respond to the individual points defined in the decree of the judge and take care not to exceed the limits of his task. Nevertheless, as Manuel Arroba Conde asserts, it is inadvisable for the judge to formulate particular questions with regard to the expert so that the latter obtains is presented with a thorough analysis and response to individual doubts.[14]

In the Coram Davino judgement of 28 April 1977, it is stated that the expert must respond to three basic questions: whether the subject was affected by a mental disorder or illness at the time of the wedding; what was the nature, origin and severity of the disorder; and what was the effect of the mental disorder on the person's cognitive-volitional abilities in the context of his or her matrimonial consent.[15]

It should be noted at this point that the instruction *Dignitas connubii*, in art. 209 § 1, explicitly sets out the purposes for which the expert is appointed. "In causes of incapacity, according to the understanding of can. 1095, the judge is not to omit asking the expert whether one or both parties suffered from a particular habitual or transitory anomaly at the time of the wedding, what was its seriousness, and when, from what cause, and in what circumstances

[11] Cf. JOANNES PAULUS II, Allocutio ad Rotae Romanae Auditores, 5.02.1987, p. 1455.

[12] Cf. M. Z. STEPULAK, *Osobowy wymiar małżeństwa kanonicznego jako punkt odniesienia w pracy biegłego psychologa*, "Ius Matrimoniale" 8 (2003), p. 188.

[13] Cf. Sent. coram Palestro, 18.12.1991, ME 117 (1992), p. 192-193.

[14] Cf. M. J. ARROBA CONDE, *La prova peritale e le problematiche processualistiche*, in: *L'incapacità di intendere e di volere nel diritto matrimoniale canonico*, Città del Vaticano 2000, p. 389. The author says: "Nelle cause di incapacità ex c. 1095, i sudetti chiarimenti risultano più specifici, ed includono tutte le notizie relative alla natura delle eventuali anomalie, la gravità, l'origine e l'evoluzione, con speciale attenzione all'incidenza della disfunzione all'epoca del matrimonio."

[15] Cf. Sent. coram Davino, 28.04.1977, RRD 69 (1977), p. 234: "Peritorum vero est Iudicem edocere: a) de existentia psychicae perturbationis, apud partem quae incapax predicatur, tempore matrimonii; b) de natura, origine, gravitate istiusmodi perturbationis; c) de influxu perturbationis in processu deliberationis ad matrimonium." See also Sent. coram Egan, 1.03.1984, RRD 76 (1984), p. 157; Sent. coram Huot, 26.06.1984, RRD 76 (1984), p. 436-437.

it originated and manifested itself."[16] Furthermore, art. 209 § 2 DC provides detailed indications on the subject matter of the expert's opinion with regard to the different titles of incapacity defined in can. 1095, 1°-3° of the Code.

3. USELESSNESS OF EXPERT'S OPINION

The term 'useless' is defined in the English Dictionary as 'not useful', 'not doing', or 'it has no effect'. In this context, a question arises regarding the understanding of the norm contained in can. 1678 § 3, which points to the uselessness of an expert opinion. In response to this question, two distinct understandings can be identified, positive and negative. In either case, the opinion of an expert is deemed to be of no value, that is to say, it is not useful or helpful in any way. This means that whether or not this opinion even if this opinion has been submitted, it will not change the status of the case and the evaluation of the means of proof.

On 16 June 1998, the Supreme Court of the Apostolic Signatura issued a decree that delineates two possible situations in which a judge may find the participation of an expert to be useless.[17] Firstly, it is a document or testimony that provides the judge with sufficient evidence in the case. Secondly, if the facts and circumstances show beyond doubt a lack of sufficient use of reason or an inability to undertake the essential matrimonial rights and duties. The cases indicated by the Apostolic Signatura pertain to cases of nullity of marriage, where the judge is convinced that the marriage is invalid. However, it should be noted that the indications of the Apostolic Signatura are questionable. Bartosz Nowakowski pointed this issue in an intriguing manner, stating in his article that the above regulation causes some confusion because it leaves the judge with a real possibility to make judgements based on documents, wit-

[16] "In causis incapacitates, ad mentem can. 1095, iudex a perito quaerere ne omittat an alterutra vel utraque pars peculiari anomalia habituali vel transitoria tempore nuptiarum laboraverit; quaenam fuerit eiusdem gravitas; quando, qua de causa et quibus in adiunctis originem habuerit et sese manifestaverit."

[17] Cf. SIGNATURA APOSTOLICA, Decretum 28252/97, "Periodica" 87 (1998), p. 619-622: "Quando, etiamsi non agtur de 'peritia' sensu tecnico, in actis habetur documentum vel tespimonium ita qualificatum, ut iudici sufficientem probationem ad rem praebeat […]. Quando ex factis et circumstantiis probatis sine dubio vel carentia apparet sufficientis usus rationis vel incapacitas assumendi onera matrimonii essentialia; hoc enim in casu nullitas matrimonii declarari potest ob evidentem consensus defectum, quin requiratur accurata diagnosis causae psychicae ob quam habetur ille defectus."

ness statements, facts or circumstances. This leaves the professional evaluation of the documents to someone who lacks the requisite expert knowledge. Furthermore, with regard to the facts and circumstances in question, it remains uncertain whether the testimony of witnesses can be deemed a reliable, factual and accurate interpretation of the mental reality of the subject being assessed. Is it sufficient to establish solely on the basis of the case file that a mental dysfunction existed in one or both the parties at the time of the marriage? Finally, will the exclusion of an expert not be tantamount to anticipating a sentence? With these difficulties in mind, the same decree remedies them to some extent. The aforementioned approach does not preclude an alternative route. Instead, it allows the judge to appoint an expert, for instance, to assess the documentation gathered throughout the course of the trial and determine whether the subject in question may have been incapacitated.[18]

The most interesting aspect of this case is the issue of the judge's decision and the question of whether, at this stage of the proceedings, the judge is entitled to make a decision that anticipates the sentence and, in a positive sense, influences the subsequent course of the case. The question thus arises as to whether the president of the tribunal can attain the moral certainty that is necessary to make a sentence already at this stage of the proceedings and whether he is entitled to make such a decision solely on his own. Should he not consult the other members of the judicial trial about his decision? Indeed, it is possible to imagine a situation in which, in the opinion of the president, the case is obvious and the expert's opinion is useless, and then it turns out at the sentencing stage that the other members of college of judges have a different opinion. In these circumstances, was the president's decision not an action detrimental to the trial and the interests of the parties to the litigation? Personally, I think that disregarding the expert's opinion, even in a case that the judge deems obvious, is not a prudent course of action and should be an absolute exception. Indeed, it should be noted that even when the facts are obvious, an expert opinion may prove useful and, above all, valuable in giving actual reasons for the sentence. Therefore, it is not advisable to dismiss such an opinion, even in a situation that appears clear-cut to the judge.[19]

[18] B. NOWAKOWSKI, *Biegły w sprawach o nieważność małżeństwa spowodowanych zaburzeniami nastroju – trzy objaśnienia*, "Ius Matrimoniale" 33 (2022), no. 2, p. 125.

[19] Zob. G. LESZCZYŃSKI, *La prova perziale come uno dei fondamentali mezzi di prova nelle cause matrimoniali per immaturità affettiva*, "Apollinaris" 74 (2001), p. 531: "[…] siccome la ricerca della verità, deve rimanere sempre la base ed il fine del giudizio canonico sulla nullità matrimoniale, sembra strano che certi autori, siano così convinti a dichiarare l'inutilità della consulenza tecnica. A nostro parere, uno studio approfondito da parte del perito, quindi, di una

In this context, it is still worth looking at what moral certitude is necessary to declare the nullity of a marriage. Pope Pius XII provides a relevant argument here. He points out that, as a rule, a minimum degree of moral certitude is sufficient. In other words, it is sufficient that one possesses objective moral certitude – i.e., that any reasonable doubt about the truth has been excluded. Once a judge has gained certainty on the matter in question, as a rule, he should not seek a higher degree of certainty.[20] Moral certitude in the canonical-procedural sense is a certainty that also does not at the same time exclude in an absolute way that it could be otherwise. In matrimonial matters, when it is impossible to achieve moral certitude, the judge should not be guided by the idea of false sympathy. The judge's task of seeking the truth consists mainly in proceeding in such a way as to bring to full light the matter in which a legal doubt is implicated and to ensure that the intellectual evaluation contained in the judgement is truthful. Substantive truth imposes an obligation on the judge to act within the scope of his or her powers in such a way as to issue a sentence that is consistent with objective reality, doing justice and equity. This applies to sentencing. However, it is questionable whether moral certitude can be applied to a decision regarding the uselessness of a expert opinion. In my opinion, this is not the case.

I believe things are much simpler if we consider the uselessness of an expert opinion in a negative sense. An expert opinion may be useless if there is no evidence of a mental anomaly in relation to the incapacity mentioned in can. 1095 of the Code. Of course, doubts of the same kind may arise here: is it not an anticipation of the sentence? In this instance, however, I am convinced by the arguments in favour of dismissing an expert opinion.

4. THE USELESSNESS OF THE EXPERT OPINION

It is up to the judge to assess the probative value of an expert opinion. In this regard, it is extremely important to separate the competences of the expert and the judge.[21] The judge's main task is to analyse the procedural file and the

persona competente in una materia abbastanza delicata e difficile, come ad esempio quella dell'immaturità affettiva, anche se le fattispecie, in certi casi, si presentano abbastanza chiari e semplici, può porre sempre una nuova luce ed offrire una diversa interpretazione dei fatti. Negare '*a priori*' l'ausilio tecnico significa un'po anticipare la decisione finale."

[20] Cf. PIUS XII, Allocutio ad Prealatos Sacrae Romanae Rotae, 1.10.1942, AAS 34 (1942), p. 338-343.

[21] Cf. Sent. coram Mattioli, 20.12.1965, RRD 57 (1965), p. 960-961: "[…] distinguenda est provincia seu competentia testium, ab illa peritorum, et ab illa Iudiciis. […] testium munus est facta

evidence contained therein. This analysis is undertaken with a view to issuing a sentence as to the nullity or validity of the marriage in question. The expert, on the other hand, is only required to give an opinion on the psycho-physical structure of the subject at the time of his or her wedding (cf. art. 209 § 3 DC). It is notable that there is no shortage of opinions in case law in which experts also comment on the subject's incapacity for a valid matrimonial consent. This anticipates, as it were, the judge's decision. However, it should be highlighted that the expert's opinion should be of a purely technical nature. The expert, demonstrating the disorder existing in the subject, evaluates its gravity, the period in which it appeared and the impact it has had on the subject's mental state. On the other hand, he should not comment on the assessment of the validity or invalidity of the subject's marriage.[22] However, is it possible that an expert opinion is drawn up but turns out to be useless to the judge as it does not specify the type of anomaly or severity? In this respect, the criteria for evaluating an expert opinion are relevant.

According to can. 1578 § 2, "the expert in his opinion must indicate clearly by what documents or other suitable means they gained certainty of the identity of the persons, things, or places, by what manner and method they proceeded in fulfilling the function entrusted to them, and above all on which arguments they based their conclusions." The Pontifical Council for Legislative Texts, in its instruction *Dignitas connubii*, adds that the expert must also indicate which arguments form the basis for the conclusions reached in the report and what degree of certainty those conclusions enjoy art. 210 § 2 DC. In evaluating the expert opinion, the judge should focus on a few relevant issues, particularly the actual basis, the methodological and argumentative basis, and the anthropological basis. Moreover, it is not without significance the

referre, idest et gestus, et dicta, et omissiones, quae in patiente notata sunt; non autem sensum, pondus, et valorem istorum omnium definire, nam iudicium eiusmodi implexum et vere arduum est. […] ad peritos spectat ex factis iisdem, non distincte consideratis, sed una simul sumptis, […] diagnosim proferre, item morbi originem, insuper eiusdem morbi consectaria. […] ad Iudicem pertinet definire utrum concordia inter peritorum sententias adsit: utrum ipsi ad artis suae praecepta processerint: utrum rationes de sua sententia cohaerenter dederint: utrum eorum conclusio logice ex praemissis procedat: et, in casu discordiae inter peritos, Iudicis est illam ex variis sententiis amplecti, quae magis cum ratiocinii legibus congruit."

[22] Cf. Sent. coram Mattioli, 20.12.1965, p. 960-961: "[…] ad peritos spectat ex factis iisdem, non distincte consideratis, sed una simul sumptis, […] diagnosim proferre, item morbi originem, insuper eiusdem morbi consectaria. […] ad Iudicem pertinet definire utrum concordia inter peritorum sententias adsit: utrum ipsi ad artis suae praecepta processerint: utrum rationes de sua sententia cohaerenter dederint: utrum eorum conclusio logice ex praemissis procedat: et, in casu discordiae inter peritos, Iudicis est illam ex variis sententiis amplecti, quae magis cum ratiocinii legibus congruiti."

objectivity of the expert and the degree of certainty with which the expert reached his or her conclusion.

In evaluating the expert's opinion, the judge should first of all pay attention to the expert's historical description of the development of the disorder. It is crucial to ascertain whether the expert has maintained the historical succession of the facts presented, on which his opinion is based. This is of great significance for determining the onset of the disorder and reaching a degree of severity that prevents matrimonial consent. Indeed, only the correct historical location of the severity of the psychosis makes it possible to formulate conclusions regarding the subject's state of mind at the time of the wedding.[23]

The method used by the expert, as set out in the opinion, should lead him to reach conclusions that are consistent and factual.[24] The fundamental issue is the consistency between the individual facts, as well as between the mental disorder he identifies and the facts that, in his opinion, confirm the presence of this disorder.[25] In addition, in evaluating an expert's opinion is the objectivity of the expert and the certainty with which the expert expresses his or her conclusions. Objectivity must be presumed. According to Juan J. García Failde's point of view, every person displays a capacity for empathy and a willingness to assist specific individuals. The more objective the expert's opinion, therefore, the greater its evidentiary value.[26]

The basic principle guiding the judge in evaluating and consequently accepting or rejecting the conclusions drawn by the expert is the principle of free interpretation. Tomasso Giussani notes that in the case law predating the 1983 promulgation of the Code this principle was practically inapplicable. The

[23] Cf. Sent. coram Pompedda, 16.12.1985, RRD 77 (1985), p. 586, where the author states: "Neque denique umquam Iudices ecclesiastici suum deponant officium cribrandi causae acta, adeo ut contenti non sint conclusionum vel peritorum in arte medica, quorum conclusiones carent praemissis seu factis certis atque univocis."

[24] Cf. Sent. coram Mattioli, 20.12.1965, p. 961. The author states: "[…] ad Iudicem pertinet definire […] utrum ipsi (periti) ad artis suae praecepta processerint: utrum rationes de sua sententia cohaerenter dederint: utrum eorum conclusio logice ex praemissis procedat."

[25] M. PROFITA, *L'incidenza della depressione nelle cause canoniche di nullità del matrimonio: profili medico-legali e probatori*, Roma 2006, p. 237.

[26] J.J. GARCÍA FAILDE, *Valoración jurídica de la prueba pericial psicológico/psiquiátrica*, in: *Incapacitad consensual para las obligaciones matrimoniales*, Pamplona 1991, p. 305. The author states: "Es necesario que el perito sea objetivo. Aunque no siempre es fácil serlo incluso aún cuando se hagan esfuerzos por serlo; y es que la objetividad del perito puede verse comprometida aún en contra de su voluntad o por las oscuridades del caso o por la tendencia incosciente a favorecer a aquel por quien se siente simpatía etc.; lo que el perito debe proponerse es ayudar al juez en la búsqueda de la verdad prescindiendo de si con esta ayuda sale beneficiando o perjuidicando el periciado."

judge's evaluation of an expert opinion was generally limited to the person of the expert himself, and therefore to an assessment of his scientific level and his integrity, and at the same time the formal aspects of the opinion itself.[27] Under current canon law, the probative value of an expert's opinion is not defined; rather, it depends on the judge himself, who must also take into account other evidence and the circumstances of the case (cf. can. 1579 § 1). In the same way, the probative value of an expert opinion is defined by *Dignitas connubii* (art. 212 § 1 DC).

The principle of free interpretation cannot be equated with arbitrary decision-making on the part of the judge. This means that, although the rule the conclusions of an expert opinion to be rejected or accepted, always with an indication of the motivation for his or her decision. It would be inappropriate for the judge to disregard the expert's opinion, even if the conclusions drawn are not consistent with the other evidence of the case. Every expert opinion, due to the professionalism of its implementation, requires a diligent analysis by the judge. However, this does not imply an obligation to accept it, but only to analyse it.

CONCLUSIONS

It must be said that an expert opinion is an extremely important means of evidence, especially in those types of cases that concern a person's psychological sphere. Thanks to his or her competence, an expert is able to determine not only the existence of a mental illness or other disorder of a mental nature in the subject but is also able to characterise it temporally. This is extremely important for the case at hand, as only such an illness, disorder or other mental disturbance that existed at the time of the subject's wedding and had a destructive effect on the marriage consensus, renders him or her incapable of expressing it. Therefore, given all the doubts raised, I think that the withdrawal of the expert opinion, even when the judge is convinced of the positive outcome of the case, should be an exception rather than the norm. In a negative case, such a rejection is more justified. However, it is always possible to face the charge of anticipating a sentence of evidence depletion.

Translated by Paweł Kaleta

[27] T. GIUSSANI, *Discrezionalità del giudice nella valutazione delle prove*, Città del Vaticano 1977, p. 181.

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BEZUŻYTECZNOŚĆ OPINII BIEGŁEGO W PROCESIE O STWIERDZENIE NIEWAŻNOŚCI MAŁŻEŃSTWA W ŚWIETLE KAN. 1678 § 3 KPK/1983

Streszczenie

Artykuł jest próbą odpowiedzi na pytanie, czy opinia biegłego sądowego jest zawsze konieczna, czy też może okazać się bezużyteczna w niektórych typach spraw lub zaistniałych okolicznościach. Wydaje się bowiem, że istnieją okoliczności i dowody, z których wynika, że w niektórych okolicznościach opinia biegłego nic nie wniesie do sprawy. I tak jest w rzeczywistości, zarówno wówczas, gdy sędzia jest przekonany o negatywnym wyroku, jak i wówczas, gdy jest przekonany o wyroku *affirmative*. Wtedy może zrezygnować z opinii biegłego z zastrzeżeniem, że owa rezygnacja nie będzie na niekorzyść strony.

Słowa kluczowe: małżeństwo; opinia; biegły; nieważność