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## Taking evidence *ex officio* by the court

This publication describes the issue of taking evidence *ex officio* by the court in civil proceedings. This topic was selected due to controversies it arouses both in the doctrine and judicature, as well as due to its practical aspects. Doubts which arise at the beginning oscillate around answers to several key questions:

- is admitting evidence *ex officio* by the court in compliance with constitutional principles, i.e. the principles of impartiality of the court and equal treatment of parties?
- is it restricted only to specific circumstances?
- is the duty to present evidence by the court always left to its discretion?
- should the court allow evidence *ex officio* in the event the parties are represented by professional legal representatives?

This work attempts to provide answers to the questions above.

At the beginning, it is worth mentioning the significance of the act of 1 March 1996 amending the provisions of the Code of Civil Procedure (CPC)<sup>1</sup> in the described issue. The act amended *inter alia* the content of the provisions of Art. 3, 213 and 232 of CPC in such a manner that the right to present evidence became principally the duty of the parties. The regulations contained therein did not completely deprive the court of the possibility to take evidence *ex officio*. However, they removed the competence of the court to conduct legal proceedings in order to establish the necessary evidence. “The Supreme Court consistently emphasizes the significance of (...) the discretionary authority of the judges in pursuing substantive truth, which constitutes one of the elementary purposes of legal proceedings”<sup>2</sup>.

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<sup>1</sup> Dz.U. 1996, No. 43, item 189 as amended.

<sup>2</sup> The reasons for the judgment of the Supreme Court of 4 January 2007, V CSK 377/06, Legalis no. 93284.

While the amendments introduced by that act limited the possibility of the court to pursue the truth, they did not remove the principle of substantive truth<sup>3</sup>.

Due to the fact that the legislator does not specify what type of evidence is admissible by the court to be taken *ex officio*, it should be assumed that this possibility refers to every type of evidence<sup>4</sup>. However, the evidence may be admitted only with regard to the facts which have been presented by the parties. It should be assumed that with respect to the remaining circumstances which have not been covered by the assertions of the parties, the court is deprived of the possibility to take evidence *ex officio*<sup>5</sup>. Nevertheless, in consideration of the character of non-trial proceedings, it is deemed that the court has the right to take evidence *ex officio* with respect to the facts which the court is to establish *ex officio*<sup>6</sup>.

It is indicated in the literature that the court may admit evidence *ex officio* only in the following instances:

- when a particular fact is presented by a party,
- when this fact is of material importance to the proper adjudication of the case,
- when this fact remains contentious<sup>7</sup>.

The possibility of the court to admit evidence not indicated by a party (sentence 2 of Art. 232 of CPC) is an exception to the principle of contradictoriness, on the basis of which it is the duty of the parties to present evidence in order to establish facts (sentence 1 of Art. 232 of CPC). Although the principle of contradictoriness is one of the elementary principles of the civil procedure, the primary purpose of the procedure, which is rendering a judgment in line with the actual state of affairs, must not be forgotten in applying the principle<sup>8</sup>.

In light of the above, there is some sort of inconsistency in the provisions of the Code of Civil Procedure. On one hand, the legislator introduces rigorous process, stating that it is the obligation of the parties to gather and present evidence at the appropriate time, with the consequences of the court not admitting late evidence (Art. 217 § 2 of CPC). On the other hand, the legislator mitigates this restriction in the provisions of Art. 5 and 232 sentence 2 of CPC<sup>9</sup>.

The judicature and doctrine have not adopted a uniform stance in the described issue. In order to understand and respond to the opinions expressed in the jurisdiction and literature, one should examine selected judicial decisions

<sup>3</sup> Resolution of the Supreme Court of 17 February 2004, III CZP 115/03, Legalis no. 61428.

<sup>4</sup> E. Rudkowska-Ząbczyk, *Komentarz do art. 232 k.p.c.* [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. E. Marszałkowska-Krześ, Warsaw 2017, Side no. 6.

<sup>5</sup> M. Malczyk-Herdzina, *Dopuszczalność dowodu z urzędu w procesie cywilnym*, PS 2000, No. 6, p. 63

<sup>6</sup> Order of the Supreme Court of 12 January 2005, I CK 449/04, Legalis no. 79821.

<sup>7</sup> M. Malczyk-Herdzina, *Dopuszczalność dowodu...*, p. 59.

<sup>8</sup> Judgment of the Supreme Court of 11 December 2014, IV CA 1/14, Legalis no. 1185729.

<sup>9</sup> Judgment of the Supreme Court of 4 August 2016, III UK 201/15, Legalis no. 1488732.

containing the settlements of the contentious issues, as well as arguments raised by representatives of the doctrine.

Firstly, the analysis of the juridical decisions which refer to the issue of presenting evidence *ex officio* by the court being in compliance with the constitutional law will be carried out.

It is worth taking into account the content of Art. 45 § 1 of the Constitution of the Republic of Poland<sup>10</sup> which states that “everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court”. This provision entitles every person to demand a fair trial, which is a trial seeking to ascertain the truth. To this end, courts sometimes admit evidence *ex officio*, thus exposing themselves to the allegation of impartiality. A question of whether it is more important to render a truthful judgment or to obey the constitutional principle of equality of the parties arises. It seems that finding the “appropriate balance” would be the best solution – a compromise which is not easy to achieve<sup>11</sup>.

In reality, however, the court, having rendered a judgment, is exposed to the allegation of impartiality, raised by the losing party, in every case.

In its judgment of 13 February 2004, the Supreme Court decidedly pointed that “the admission of evidence *ex officio* by the court may not be deemed as an activity violating the principles of impartiality of the court and equality of the parties”<sup>12</sup>.

In its judgment of 11 December 2015, the Supreme Court expressed a similar opinion to the one above, although it pointed out the possibility of infringing the above-mentioned constitutional rights, declaring that presenting evidence *ex officio* by the court may generally not be deemed as an activity violating the constitutional principles of impartiality of the court and equality of the parties. The court thus aims to render an accurate judgment. Nevertheless, the court should exercise this right cautiously and moderately, so as to avoid facing the allegation of impartiality. The party who raises such an allegation should prove that the purpose of admitting evidence *ex officio* by the court was not to clarify the actual state of affairs, but to provide sole benefit to the opposing party<sup>13</sup>.

K. Knoppek claims that admitting evidence *ex officio* by the court will always infringe the interest of one of the parties to the case<sup>14</sup>. In order to minimize those negative effects on one of the parties, that party should be vested in the

<sup>10</sup> The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. no. 78, item 483).

<sup>11</sup> Similarly in judgment of the Supreme Court of 4 August 2016, III UK 201/15, Legalis no. 1488732.

<sup>12</sup> IV CK 24/03, Legalis no. 64225.

<sup>13</sup> Judgment of the Supreme Court of 11 December 2015, file no. III CSK 23/15, Legalis no. 1522515.

<sup>14</sup> K. Knoppek, *Problem dopuszczania przez sąd dowodów z urzędu w postępowaniu cywilnym*, Ruch Prawniczy, Ekonomiczny i Socjologiczny, 2007, number 3, p. 8

right to respond to the evidence adduced *ex officio* and should be given the possibility to adduce evidence to the contrary<sup>15</sup>.

It is quite frequently indicated in the literature and judicature that the court may admit evidence *ex officio* only in specific circumstances. These circumstances include:

- the necessity to protect public interest,
- the suspicion of conducting an artificial trial,
- the suspicion that the parties aim to circumvent the law,
- flagrant helplessness of a party acting without a legal representative<sup>16</sup>.

However, this restriction does not arise out of the literal interpretation of Art. 232 of CPC, which equips the court with the right to take evidence *ex officio*. Therefore, the court should each time decide itself whether the admission of evidence *ex officio* is necessary to carry out an accurate trial.

It is also indicated in the judicature that the admission of evidence *ex officio* by the court should be exceptional, justified by circumstances, in the cases where the principle of evidence preclusion has been applied. This restriction is justified by the fact that presenting evidence *ex officio* by the court in such cases may frustrate the effects of evidence preclusion<sup>17</sup>.

M. Rejdak presented an interesting point of view, in an attempt to combine the possibility of presenting evidence *ex officio* by the court with the possibility of the free assessment of evidence by the court. “Since the court decides, on the basis of evidentiary proceedings conducted, following the principle of Art. 6 of the Civil Code, whether the facts relevant from the perspective of legal standard have been established by means of the evidence taken. To this end, the court could admit evidence not indicated by any of the parties”. Furthermore, M. Rejdak remembers that the court may establish the actual state of affairs on the basis of the facts which the court has become acquainted with *ex officio*, thus exposing itself to the allegation of impartiality. The doctrine seems to forget about such a situation. The purpose of the court in admitting evidence *ex officio* is to elucidate the circumstances which are relevant to the proper adjudication of the case. According to M. Rejdak, the allegation of the court being impartial in such cases are groundless, since the court which makes the free assessment of evidence could also be exposed to the same allegation<sup>18</sup>.

<sup>15</sup> E. Rudkowska-Ząbczyk, *Komentarz do art. 232 k.p.c.* [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. E. Marszałkowska-Krześ, Warsaw 2017, Side no. 15.

<sup>16</sup> Judgment of the Supreme Court of 20 December 2005, III CK 121/05, Legalis no. 188116; judgment of the Supreme Court of 5 November 1997, III CKN 244/97, Legalis no. 31759; resolution of the Supreme Court (7) of 19 May 2000, III CZP 4/00, Legalis no. 46741.

<sup>17</sup> Judgment of the Supreme Court of 4 January 2007, V CSK 377/06, OSP 2008 no. 1, item 8 with E. Marszałkowska-Krześ's gloss.

<sup>18</sup> M. Rejdak, *Komentarz do art. 232 k.p.c.* [in:] *Kodeks postępowania cywilnego. Tom I. Komentarz. Art. 1 -366*, ed. A. Marciniak, K. Piasecki, Warsaw 2016, Side no. 5.

I completely agree with the stance adopted by the Supreme Court in the judgment of 22 February 2006, stating that “the attempts to limit the scope of Art. 232 sentence 2 of the CPC made in the jurisdiction and literature may not be deemed accurate”. Not only the linguistic interpretation of this provision speaks against these limitations, but also constitutional reasons and axiological aspects. The authority of the judges, in this case specified as nearly discretionary by the legislator, may not be limited or otherwise restricted by means of interpretation; if the legislator wanted to reduce this authority or set its limits, they would have to state it explicitly. The sometimes raised aspect of the speed of the proceedings is less important, whereas a possible disturbance of the balance between the parties is a matter of practice and evaluation of every specific case<sup>19</sup>.

Nevertheless, one should agree with the opinions stating that before the court admits evidence *ex officio*, it should first undertake activities which would induce the parties to present evidence. Where this is ineffective, the court should take advantage of the possibility to give information to the parties, which arises out of the provision of Art. 5 of CPC – consisting in providing instructions to the parties acting without legal representatives regarding the procedural activities and the effects of such activities, as well as instructing the parties on the purpose of appointing a legal representative (Art. 212 § 2 of CPC)<sup>20</sup>.

On a side note, it is worth noting that in proceedings in cases concerning the labour and social security law “contradictoriness (...) is modified by active contribution of the court in evidence gathering”<sup>21</sup>. Pursuant to Art. 468 § 1 of CPC, in such cases the court conducts explanatory proceedings when the initial examination of the case supports it and when the case has not been heard before a conciliation commission. The purpose of such an activity is *inter alia* to indicate what evidence should be taken in order to elucidate the contentious circumstances between the parties (Art. 468 § 1 subsection 3 of CPC)<sup>22</sup>. Note that the court hearing social security cases is not obliged by the legislature to conduct evidentiary proceedings *ex officio*<sup>23</sup>.

Referring in turn to specific circumstances entitling the court to admit evidence *ex officio*, which were specified above, in another decision the Supreme Court declared that in such cases the entitlement of the court becomes its obligation<sup>24</sup>. The court presents an opinion that the conversion of “may” to “must” is

<sup>19</sup> Judgment of the Supreme Court of 22 February 2006, III CK 34105, Legalis no. 74981.

<sup>20</sup> Resolution of the Supreme Court (7) of 19 May 2000, III CZP 4/00, Legalis no. 46741; similarly in K. Flaga-Gieruszyńska, *Komentarz do art. 232 k.p.c.* [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. A. Zieliński, K. Flaga-Gieruszyńska, Warsaw 2017, Side no. 3.

<sup>21</sup> Judgment of the Supreme Court of 4 August 2016, III UK 201/15, Legalis no. 1488732.

<sup>22</sup> Ibidem.

<sup>23</sup> Judgment of the Court of Appeal in Bydgoszcz of 24 June 2014, III AUA 93/14, Legalis no. 992589.

<sup>24</sup> Judgment of the Supreme Court of 22 February 2006, III CK 34105, Legalis no. 74981.

justified in this kind of situations and is not a sole instance of conversion made on the grounds of the provisions of the Code of Civil Procedure<sup>25</sup>. While in accordance with the linguistic interpretation of Art. 232 sentence 2 of CPC, the wording “may” used there unequivocally means that the admission of evidence *ex officio* is an entitlement, not the obligation of the court<sup>26</sup>. It seems that if the legislator wanted to impose such an obligation on the court, they would add the wording “and in specific circumstances it must” next to the word “may”.

Without going into specifics, only pointing that “sometimes, in the light of public interest (being always present in cases concerning social security)” the Supreme Court declared that the entitlement of the court to admit evidence *ex officio* changes to its obligation<sup>27</sup>.

The stance of the judicature may also be surprising which states that “one may allege that the court did not admit evidence *ex officio*, even though there had been reasons for this, however, one may not point out that the court admitted some evidence, meaning that it exercised the discretionary right granted to the court”<sup>28</sup>. In its judgment of 15 January 2010, the Supreme Court adopted a similar stance, pointing that if obtaining specific information is only possible by means of an expert’s opinion, then in the event of failure of a party to present evidence in this respect, not admitting the expert evidence *ex officio* constitutes an infringement of Art. 232 sentence 2 of CPC, when taking such evidence is the only way to avert the danger of rendering an inaccurate judgment<sup>29</sup>. This view is arguable. Taking into account the fact that the admission of evidence *ex officio* is only an entitlement of the judges, and not their obligation, it does not seem appropriate to make an allegation of an infringement of Art. 232 of CPC. As I noted above, it seems that if such an obligation lied on the court, then the legislator would specify in that legal provision that in specific circumstances the court is obliged to take evidence *ex officio*. However, no such obligation is present in the provisions of the Code of Civil Procedure.

The possibility of admitting evidence *ex officio* by a court of second instance also raises a lot of doubts. However, it seems that the present jurisdiction allows for such a possibility. In its judgment of 17 April 2008, the Supreme Court declared that the entitlement of the court to present evidence *ex officio*, arising out of Art. 232 sentence 2 of CPC, extends to the entire process, also to appellate proceedings, and, furthermore, it may not be transformed to the obligation

<sup>25</sup> Ibidem.

<sup>26</sup> Similarly in judgment of the Court of Appeal in Katowice of 20 January 2017, V ACa 381/16, Legalis no. 1575712; cf. judgment of the Supreme Court of 24 October 1996, III CKN 6/96, Legalis no. 30333.

<sup>27</sup> Judgment of the Supreme Court of 4 August 2016, III UK 201/15, Legalis no. 1488732.

<sup>28</sup> Judgment of the Supreme Court of 22 February 2006, III CK 34105, Legalis no. 74981.

<sup>29</sup> Judgment of the Supreme Court of 15 January 2010, I CSK 199/09, Legalis no. 336484.

of the court<sup>30</sup>. In another decision of 8 December 2016<sup>31</sup>, the Supreme Court adopted a similar stance, declaring that “admitting evidence *ex officio* constitutes one of the rights of the court of second instance (Art. 232 sentence 2 of CPC in conjunction with Art. 391 § 1 of CPC) and exercising this right may not be generally deemed as a procedural infringement”.

Whereas in the doctrine the opinions are divided. T. Ereciński<sup>32</sup> and A. Górski<sup>33</sup> are among those in favour of the admissibility of the court to present evidence *ex officio* in appellate proceedings and they do not have any contraindications for the court to exercise this right. Those against this solution, including K. Kołakowski, point out that allowing such a situation would result in Art. 381 of CPC being deprived of any legal significance<sup>34</sup>.

K. Knoppek have also adopted a critical stance. In his opinion, “there is real danger that if courts of second instance admit evidence *ex officio*, they will render their judgments on the grounds of circumstances not raised in the appeal, thus going beyond the charges brought in the appeal. This would be in contradiction to Art. 378 § 1 of CPC which specifies that the court of second instance is bound by the limits of the appeal. The limits of the appeal are the limits of the charges brought in the appeal – except for the charge of the invalidity of the proceedings – which strictly bind the court of second instance”<sup>35</sup>.

In my opinion, taking evidence *ex officio* by the court is not restricted in the legislature on the grounds of the applicable legal regulations, thus it should be assumed that this right is also vested in the appellate courts.

In response to the last question formulated at the beginning, different stances can also be observed in the judicature. On one hand, it is pointed out that “in a situation where a party is represented by a professional legal representative, the burden of solving the case by admitting expert evidence *ex officio* does not lie on the court. A different recognition of this burden of proof would mean that even professional legal representatives would be released from the duty to present evidence, shifting the procedural activity on the court”<sup>36</sup>. Furthermore, presenting evidence by the court in such instances could constitute grounds for violating the constitutional right of equal treatment of the parties<sup>37</sup>. On the

<sup>30</sup> Judgment of the Supreme Court of 17 April 2008, I CSK 79/08, Legalis no. 150524.

<sup>31</sup> II UK 484/15, Legalis no. 1549945.

<sup>32</sup> T. Ereciński, *Apelacja i kasacja w procesie cywilnym*, Warsaw 1996, p. 63.

<sup>33</sup> A. Górski, *Side notes in Krzysztof Kołakowski's book. Dowodzenie w procesie cywilnym*, Przegład Sądowy 2000, no. 11, pp. 148-149.

<sup>34</sup> K. Kołakowski, *Dowodzenie w procesie cywilnym*, Warsaw 2000, pp. 123-124.

<sup>35</sup> K. Knoppek, *Problem dopuszczania przez sąd...*, p. 10.

<sup>36</sup> Judgment of the Court of Appeal in Warsaw of 17 June 2016, VI ACa 768/15, Legalis no. 1504960; similarly in judgment of the Supreme Court of 24 November 2010, II CSK 297/10, Legalis no. 407520.

<sup>37</sup> Judgment of the Court of Appeal in Szczecin of 18 November 2015, I ACa 715/15, Legalis no. 1445763.

other hand, there are some judicial decisions where it is deemed that a situation where a party is represented by an advocate or legal counsel does not definitely exclude the possibility of admitting evidence *ex officio*, since even in such cases certain circumstances may arise which would justify the departure from the strict obedience of the principle of contradictoriness as well as the execution by the court of the right provided for in Art. 232 sentence 2 of CPC<sup>38</sup>.

In M. Krakowiak's opinion, a situation where the court presents evidence *ex officio* in the event a party is represented by an advocate or legal counsel should be deemed inadmissible. "A standpoint to the contrary would in consequence lead to releasing the legal representative from the duty to act with all due care, frustrate the purpose of appointing such a representative and clearly violate the principle of contradictoriness"<sup>39</sup>.

Here, it is worth taking into account a rather authoritative and dubious content of the judgment of the Supreme Court of 11 December 2014<sup>40</sup> which states that "the non-admission *ex officio*, in a case concerning a legitime, of the expert evidence necessary to establish the amount of the claim, where the claim sought is in principle obviously substantiated, constitutes an infringement of Art. 232 sentence 2 of CPC, also in the event the party is represented by a professional legal representative". In view of such a position of the court, the function of legal representatives is uncertain. Krakowiak rightly remarks that "it is the obligation of the legal representative to adduce such evidence to substantiate their claim and determine the civil liability of the defendant. The court adjudicates the case on the grounds of relevant substantive law and necessary findings obtained by means of evidence gathered. These findings include the evidence presented in the first place by the parties, in accordance with the procedural burden of Art. 232 of CPC"<sup>41</sup>. In this judicial decision once again, without any reference to a legal basis, the entitlement of the court to present evidence *ex officio* transforms into its obligation, at the same time breaching the model of the contradictoriness of proceedings. What is more surprising is that the entitlement becomes the duty, despite the fact that the parties are represented by an advocate or legal counsel.

It seems that on the grounds of the currently applicable provisions of the Code of Civil Procedure, the court has the right to present evidence *ex officio* in every case it finds it necessary. The legislator has not introduced any limitation in this respect, while the doctrine and judicature has repeatedly restricted the

<sup>38</sup> Judgment of the Court of Appeal in Warsaw of 7 August 2015, I ACa 1961/14, Legalis no. 1372786.

<sup>39</sup> M. Krakowiak, *Komentarz do art. 232 k.p.c.* [in:] *Kodeks postępowania cywilnego. Tom I. Komentarz art. 1-727*, ed. A. Góra-Błaszczkowska, Warsaw 2015, Side no. 4.

<sup>40</sup> IV CKA 1/14, Legalis no. 1185729.

<sup>41</sup> M. Krakowiak, *Komentarz do art. 232 k.p.c.* ..., Side no. 7.

possibility of the court to exercise the right resulting from Art. 232 sentence 2 of CPC only to specific circumstances.

Furthermore, the legislator does not exclude the possibility of the court to present evidence in the event a party is represented by a professional legal representative. Neither are there any regulations which would prohibit an appellate court from admitting evidence *ex officio*.

Note that on the grounds of the currently applicable legal regulations, the possibility of taking evidence *ex officio* by the court is only an entitlement of the court, and not (as it is often indicated) its obligation, what directly results from the literal interpretation of Art. 232 sentence 2 of CPC.

However, it is absolutely certain that admitting evidence *ex officio* by the court will always infringe the interests of one of the parties. To to this end, I think that it is reasonable to modify the content of Art. 232 of CPC, so that it directly specifies that the duty of the court to present evidence is restricted to specific circumstances only, i.e.:

- the necessity to protect public interest,
- the suspicion of conducting an artificial trial,
- the suspicion that the parties aim to circumvent the law,
- flagrant helplessness of a party acting without a legal representative.

It also seems reasonable that the court exercises this right only after a prior attempt to induce the parties to present evidence, after instructing the parties on the procedural actions and the effects of these actions, and after notifying the parties of the reasons for appointing a professional legal representative.

Summing up this work, I am going to quote the stance adopted by the Supreme Court once again, which I completely agree with, and which states that “the attempts to limit the scope of Art. 232 sentence 2 of the CPC made in the jurisdiction and literature may not be deemed accurate.” Not only the linguistic interpretation of this provision speaks against these limitations, but also constitutional reasons and axiological aspects. The authority of the judges, in this case specified as nearly discretionary by the legislator, may not be limited or otherwise restricted by means of interpretation; if the legislator wanted to reduce this authority or set its limits, they would have to state it explicitly. The sometimes raised aspect of the speed of the proceedings is less important, whereas a possible disturbance of the balance between the parties is a matter of practice and evaluation of every specific case<sup>42</sup>.

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<sup>42</sup> Judgment of the Supreme Court of 22 February 2006, III CK 34105, Legalis no. 74981.

## Bibliography:

- The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. no. 78, item 483)
- The significance of the act of 1 March 1996 amending the provisions of the Code of Civil Procedure (CPC), (Dz.U. 1996, No. 43, item 189 as amended.)
- Judgment of the Supreme Court of 24 October 1996, III CKN 6/96, Legalis no. 30333
- Judgment of the Supreme Court of 5 November 1997, III CKN 244/97, Legalis no. 31759
- Resolution of the Supreme Court (7) of 19 May 2000, III CZP 4/00, Legalis no. 46741
- Resolution of the Supreme Court of 17 February 2004, III CZP 115/03, Legalis no. 61428
- Judgment of the Supreme Court of 13 February 2004, IV CK 24/03, Legalis no. 64225
- Order of the Supreme Court of 12 January 2005, I CK 449/04, Legalis no. 79821
- Judgment of the Supreme Court of 20 December 2005, III CK 121/05, Legalis no. 188116
- Judgment of the Supreme Court of 22 February 2006, III CK 34105, Legalis no. 74981
- Judgment of the Supreme Court of 4 January 2007, V CSK 377/06, OSP 2008 no. 1, item 8 with E. Marszałkowska-Krześ's gloss
- Judgment of the Supreme Court of 17 April 2008, I CSK 79/08, Legalis no. 150524
- Judgment of the Supreme Court of 8 December 2016, II UK 484/15, Legalis no. 1549945
- Judgment of the Supreme Court of 15 January 2010, I CSK 199/09, Legalis no. 336484
- Judgment of the Supreme Court of 24 November 2010, II CSK 297/10, Legalis no. 407520
- Judgment of the Court of Appeal in Bydgoszcz of 24 June 2014, III AUA 93/14, Legalis no. 992589
- Judgment of the Supreme Court of 11 December 2014, IV CA 1/14, Legalis no. 1185729
- Judgment of the Court of Appeal in Szczecin of 18 November 2015, I ACa 715/15, Legalis no. 1445763
- Judgment of the Supreme Court of 11 December 2015, file no. III CSK 23/15, Legalis no. 1522515*
- Judgment of the Court of Appeal in Warsaw of 7 August 2015, I ACa 1961/14, Legalis no. 1372786
- Judgment of the Court of Appeal in Warsaw of 17 June 2016, VI ACa 768/15, Legalis no. 1504960
- Judgment of the Supreme Court of 4 August 2016, III UK 201/15, Legalis no. 1488732
- Judgment of the Court of Appeal in Katowice of 20 January 2017, V ACa 381/16, Legalis no. 1575712
- Ereciński T., *Apelacja i kasacja w procesie cywilnym*, Warsaw 1996,
- Flaga-Gieruszyńska K., [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. A. Zieliński, K. Flaga-Gieruszyńska, Warsaw 2017,
- Górski A., *Side notes in Krzysztof Kołakowski's book. Dowodzenie w procesie cywilnym*, Przegląd Sądowy 2000, no. 11,
- Knoppek K., *Problem dopuszczania przez sąd dowodów z urzędu w postępowaniu cywilnym*, Ruch Prawniczy, Ekonomiczny i Socjologiczny, 2007, number 3,
- Kołakowski K., *Dowodzenie w procesie cywilnym*, Warsaw 2000,
- Krakowiak M., [in:] *Kodeks postępowania cywilnego. Tom I. Komentarz art. 1-727*, ed. A. Góra-Błaszczkowska, Warsaw 2015,
- Malczyk-Herdzina M., *Dopuszczalność dowodu z urzędu w procesie cywilnym*, PS 2000, no. 6,
- Rej dak M., [in:] *Kodeks postępowania cywilnego. Tom I. Komentarz. Art. 1-366*, ed. A. Marciniak, K. Piasecki, Warsaw 2016,
- Rudkowska-Ząbczyk E., [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. E. Marszałkowska-Krześ, Warsaw 2017

## Taking evidence ex officio by the court

### Abstract

The paper discusses the problem of taking evidence *ex officio* by the court. This topic was selected due to controversies it arouses both in the doctrine and judicature. This work attempts to provide answers to the four important questions: is admitting evidence *ex officio* by the court in compliance with constitutional principles?; is it restricted only to specific circumstances?; is the duty to present evidence by the court always left to its discretion?; should the court allow evidence *ex officio* in the event the parties are represented by professional legal representatives?

**Keywords:** taking evidence ex officio, the principle of impartiality of the court, the principle of equal treatment of parties.

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## Przeprowadzenie dowodów przez sąd z urzędu

### Streszczenie:

Problematyka poruszona w pracy dotyczy przeprowadzenia dowodów przez sąd z urzędu. Niniejszy temat został wybrany z uwagi na kontrowersje, jakie za sobą niesie tak w doktrynie, jak i judykaturze. W pracy tej, autorka stara się odpowiedzieć na cztery ważne pytania: czy dopuszczenie przez sąd dowodu z urzędu jest zgodne z konstytucyjnymi zasadami?; czy jest ograniczone jedynie do wyjątkowych okoliczności?; czy inicjatywa dowodowa sądu jest zawsze pozostawiona jego uznaniu?; czy sąd powinien dopuścić dowód z urzędu w przypadku, gdy strony są reprezentowane przez profesjonalnych pełnomocników?

**Słowa kluczowe:** dowodzenie z urzędu, zasada prawa do bezstronnego sądu, zasada równego traktowania stron.

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