

3. BULGARIA

Contributing correspondents

DR Lazar GRUEV, *First president of the Court of Cassation*

Anna Gavrilova-Ancheva, *Lawyer*

Authors

Béatrice DESHAYES, *Avocat & Rechtsanwältin - Partner HW&H*

Christian EMORINE, *Consultant*

Other administrative order

YES

I. Procedural rules in calling for an expert examination

I. 1) On the initiative of

During main proceedings: to the judge's discretion. It is up to the litigants to prove the facts they are presenting. They can thus request an expert to be appointed when they believe it necessary. In that case, they must specify the facts to be proven, the expert's necessary area of competence and the object of the expert examination, with a mission made of precise questions. The judge has the final say, and can also unilaterally order an expert examination.

I.2) Mandatory expert examinations

Yes, set by the law

I. 3) Decision-maker

The judge

I. 4) Is a pre-trial expert examination possible?

YES

II. Choice and appointment of the expert(s)

II. 1) Register

For each administrative or regional court, registers of specialists approved as experts are created. The Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Cassation Prosecutor General's Office, the Supreme Administrative Prosecutor General's Office and the National Investigation Service if necessary, approve the registers specific to their needs and activities.

Expert registration can be suggested by the ministries, public institutions, communes, professional organisations and scientific institutes or a candidate can present a spontaneous request.

Before applying for the expert's enrolment on a register, the institution must, after interviewing the

candidate, ensure he has the necessary qualities in light of the principles of equality, independence, objectivity, confidentiality, and observation of ethical rules as stated by the relevant regulations, as well as verify the scientific basis of the analytical means at his disposal.

The registers are approved by commissions which are made up of the following: president of the court of appeals (or his deputy), appeals procurator (or his deputy), regional court president, regional procurator, administrative court president and head of the regional investigation service.

The registers for the Supreme Court of Cassation, Supreme Administrative Court, Supreme Cassation Procurator's Office, Supreme Administrative Procurator's office and National Investigation Service are approved by a commission which includes the president of the Supreme Court of Cassation, Supreme Administrative Court, the General Prosecutor and the head of the National Investigation Service.

The expert register has for each expert a cross-reference to the common nomenclature of competence fields – expert opinion in forensic sciences, medicine, psychology, economics, engineering and technics, biology, materials, substances and products, agribusiness, art and others.

To be registered as an expert, a person must have all his rights and match the following requirements:

- Have professional training and have the given skills or knowledge specific to the field in question;
- have worked at least five years in his specialty;
- to not have been convicted for a general crime;
- to not have lost the right to hold certain posts or engage in certain activities;
- to not hold a judicial role in the legal system;
- have a permanent resident permit in Bulgaria if the person is a foreign citizen.
- the criteria of age (formerly less than 65 years old) was repealed in 2010.
- if necessary, the court can appoint a non-registered specialist as an expert.

II. 2) Oath

There is no legal provision for the expert to swear an oath. As soon as he is referenced on the register, he is bound by the obligations stemming from the relevant legal provisions, including ethical rules. At each appointment (before the expert's oral report has been heard and before his written report has been submitted), the court reminds the expert of the criminal liability for false or misleading findings.

II. 3) Choice of the Expert

The judge determines the focus and the mission of the expert examination according to the litigants' request; he lists the material provided to the expert and checks the name of the expert, his training, specialty, scientific level, scientific title, position and if applicable, the name of the institution he works in.

The expert can be a private citizen or a civil servant.

II. 4) Participation by the parties in the appointment process

The litigants can give their opinion on any of these points, however the judge is not bound by their opinion.

II. 5) Nationality

Foreign experts are allowed if they have a long-term residence permit.

II. 6) Recusal by the litigant parties

For the same reasons as judges.

(Examples: litigant in a trial, doubt on impartiality, personal interest in the litigation, tie with one of the litigants due to a joint liability).

II. 7) Expert's withdrawal (refusal of a mission)

The expert is obliged to ask for his withdrawal in the cases for which recusal is foreseen.

An expert can refuse an appointment on the same grounds as those for witnesses, including – as well as those for recusals – the ex-spouse of one of the parties and the person who acted as a mediator in the same dispute.

Just like witnesses, experts may also refuse to answer a particular question, stating their reasons for this refusal. For example if the answer might cause immediate damage, dishonour, or criminal prosecution to himself or to his close relatives (descendants or relatives in the ascending line, siblings, spouse and ex-spouse, child, father and mother of the spouse/partner).

The court exempts the expert from the assigned task if he cannot accomplish it for lack of the necessary qualifications or because he is ill or any other objective reason, as well as in the cases in which he has not written the report within the stipulated deadline.

II. 8) Possibility of adding another expert

Depending on the judge's decision

II. 9) Possibility of being assisted by a colleague

Only with the agreement and authorisation of the organisation in charge of the proceedings.

III. Definition of the expert's mission

III. 1) Who determines the mission?

The mission's content is set by the judge. The litigants can ask specific questions, but the judge is not bound by the litigants' requests.

III. 2) Type of mission

Any question that must be clarified for the resolution of the dispute and whose answer requires particular knowledge (in the fields of science, technical art, etc.) may be subject to an expert examination. Finding causes is often part of the expert's mission - in general, the expert mission must be defined on an *ad hoc* basis.

Because, unlike witnesses, who provide information on facts, the expert's particular role is to assist the judge by proposing **conclusions** based on facts - conclusions that the judge would himself come to if he had the necessary knowledge – in general the simple notice of facts is not part of the expert's mission.

Yet some tasks that include the notice of facts may be assigned to experts, (which is why some provisions concerning witnesses are also applicable to experts). For example, when the task includes

the examination of material evidence which the expert will describe before the judge, his role is similar to that of a witness.

According to the Civil Code of Procedure, the specific means of gathering material evidence (that sometimes coincide with the fact that needs to be proven) is their direct examination by the judge (if necessary the judge may be assisted by an expert), in the hearing room, or, if this is not possible, by a judicial visit of the site with the parties' participation.

The examination of a person is entirely entrusted to an expert, in order to ensure respect for personal dignity.

IV. Progress of the expert's mission

IV. 1) Judge supervision

The court's powers are limited to controlling the requirements to which the expert is liable and to ensuring the conditions to formulate conclusions within a deadline. The court which has appointed an expert checks his identity, his specialty and his skills, his ties with the litigants and the existence of any reasons for recusal. It follows the progress of the expert examination which must comply with proceedings, and can thus set deadlines for the expert examination to be carried out and determine the necessary measures for this deadline to be respected – litigants' cooperation, communicating the elements held by third parties...

The expert must comply with the general obligations of scientific evidence, and must be of good faith, objective, analyse all the points of view, and provide a thorough report while formulating an expert opinion; he has to obey the rules of professional secrecy and code of ethics. He is personally liable for carrying out the concrete tasks that have been set, within the deadlines that are set, to show up in front of the given court when he is called in; to provide his report on the questions which have been asked.

IV. 2) Form of contradictory procedure

Not mandatory

The litigants must provide the elements requested by the expert. They have the possibility of presenting their observations after.

The judge can meet the parties' request to be present while the expert accomplishes his mission, for example during measurement proceedings.

If the parties express opinions during the expert examination, the expert must reply to them.

When the parties' analyses differ and insofar as is possible, the expert should offer alternatives.

IV. 3) Participation in the hearing

On request

V. Close of the expert examination

V. 1) Does conciliation put an end to the expert's mission?

Conciliation puts an end to the expert's mission and to the dispute, after approval of the agreement by the court.

Conciliation itself may require an expert examination and be based on the expert's findings.

An amicable settlement may also put an end to the mission provided the parties withdraw the case from before the court.

V. 2) Form imposed on the report

Submit a written report and explanations on the report in a public hearing, with the judge and the litigants able to ask questions.

The law does not require an expert to append to his report all the documentary evidence submitted to him by the litigants or by third parties, but he must mention them in his report.

Generally the expert bases his opinion on the case file, to which he has access. If the parties submit other files to the expert during his assignment, they must also file them with the court as part of the documentary evidence.

The parties may also ask the court to force the opposing party or third parties to present documents they possess that are of importance to the dispute.

It is sometimes difficult or even impossible, for practical reasons, to file all the documentary evidence that the expert must examine (for example one of the parties' extensive accounting files); the expert may also have to examine evidence that is in administrative offices or establishments and that by its very nature cannot be filed in full (such as urban plans); in practice, experts append excerpts of this to their report.

V. 3) Does the report put an end to the expert's mission?

If the report is not sufficiently complete or clear, or if there are any doubts on the accuracy of the opinions, reflections and conclusions presented, the judge can order a supplementary expert examination or a second expert examination.

V. 4) Is there an imposed structure for the report?

According to applicable regulations, the report must describe the materials used, the investigations and analyses that were carried out, the scientific and technical means used, as well as the results and conclusions reached by the expert.

In some fields (for example medical and psychological examinations), the report's formal content is specified in even more detail.

V. 5) Is a preliminary report mandatory?

There is no provision in the law for a preliminary report, and in practice it is not done.

V. 6) Is the judge bound by the expert's conclusions?

The expert's conclusions do not bind the court, which must take into account all the elements of evidence which it has at his disposal.

V. 7) Possibility of a second opinion

If there are various reports with diverging opinions, the judge, if he cannot decide alone, must use the proceedings possibilities in place and request either a supplementary expert examination or a new expert examination to clarify the case.

VI. Funding for the expert examination

VI. 1) Security-Payment

By the requester

VI. 2) Determining the amount of payment due

The judge

VI. 3) Possibility of additional payment

The court may order additional payment.

VI. 4) Determining fees and costs

The fees and costs are set by the judge and take into account:

- The complexity and specificity of the mission
- The skill and qualification level of the expert
- The time required to carry out the expert examination (each actual hour worked is paid five leva - around 2,56 €)
- The amount of work carried out;
- The necessary expenses to carry out the expert examination, such as the use of material, consumables, technical means and equipment.

VI. 5) Possibility of contesting the fees

YES

VII. Expert liability within proceedings

VII. 1) Are there any laws governing expert examinations?

There is a law setting a code of ethics with which legal experts must comply (order n° 1/16.01.2008). These regulations state that the expert must carry out his mission independently, objectively and impartially.

VII. 2) Expert liability

In case of damages caused by an inaccurate report, the expert can be liable according to the rules of civil law.

+ Criminal liability for “deliberate presentation of a false written or oral conclusion in front of a court”.

VII. 3) Mandatory insurance for the expert

YES

VIII. The expert's status

VIII. 1) Existence of selection criteria (accreditation)

YES

VIII. 2) Classification of skills

Common nomenclature

VIII. 3) Required qualifications

Assessment of knowledge

VIII. 4) Grant of accreditation

By the justice department

VIII. 5) Possibility of accrediting a legal person

NO

VIII. 6) f) Validity period for the accreditation

Enrollment on the register is not subject to any determined period.

The commissions (see II.1 above) update the registers and publish them annually. Based on proposals from the ministries, public establishments, the communes, professional orders and scientific institutes or on suggestions by the presidents of the respective bodies of the judiciary, commissions strike the expert from the register (except in the event of a death or when the expert asks to be withdrawn) if he no longer meets the requirements (not have been convicted for a general crime, not have lost the right to hold certain posts or engage in certain activities, not hold a judicial role in the legal system, and have a permanent resident permit in Bulgaria if the person is a foreign citizen); also in the event of a practical impossibility to work on concrete tasks for a period that is longer than 6 months or in the event of persistent behaviour that is contrary to the principles set out in II.1 above.

VIII. 7) Regular assessment tests

The above-described procedure is the only regular assessment mechanism.

VIII. 8) Supervision of the expert's mission

See point 6 above for control of the accreditation, and point 9 below for the activity report.

VIII. 9) Expert's activity report

Legislation requires only that the expert keep records of his reports and materials, of the samples used for comparative analyses, as well as of any other evidence used. Access to these records is only allowed to the institutional bodies that ordered them.

VIII. 10) Code of ethics

YES

VIII. 11) Good practice

Rules of good practice have been adopted by professional organisations and expert associations.

VIII. 12) Possibility of penalties

YES

VIII. 13) Laws governing the expert's status

YES: Order n° 1/16.01.2008, Art. 195-203 Code of Civil Proceedings, Art. 395-403 Judiciary System Act

IX. Bibliography

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