

21. CZECH REPUBLIC

Contributing correspondents

Ludmila KRISLOVA, *Judge at the Supreme Court*

International Department of the Supreme Court

Jiri KRUPIKA, *Judge at the Supreme Court*

Assistant to Vladimir STIBORRIK, First President of the Supreme Court

Olga KALABOVA, *Expert*

Authors

Daniel CHABANOL, *Honorary (French) State Councilor*

Alain NUÉE, *First President of the Court of Appeal of Versailles (France)*

Patricia GRANDJEAN, *Councilor at the Court of Appeal of Versailles (France)*

Other administrative order

YES

I. Procedural rules in calling for an expert examination

I. 1) On the initiative of

According to law, the decision lies exclusively with the judge when a particular knowledge is needed in order to determine the facts of the case.

It is only when the case is more complex that an expert is appointed and this appointment usually takes place before the beginning of the trial before the judge.

I.2) Mandatory expert examinations

An expert opinion is mandatory in the event of a death and subsequent autopsy (nb: autopsies are very commonly practiced in the Czech Republic).

I. 3) Decision-maker

The judge

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

Unspecified

II. Choice and appointment of the expert(s)

II. 1) Register

Experts must be registered on lists established by regional courts. The Ministry of Justice has a national register of 10,372 individual experts.

There is a separate register of 442 public or legal persons who are especially entitled to carry out expert missions.

However, the judge may appoint an unregistered expert if there is none in the required specialist field or in extremely complex disputes that demand highly specialised skills (i.e. universities, clinics etc.)

II. 2) Oath

Experts take an oath once only, when they are first registered.

II. 3) Choice of the Expert

The parties or the judge

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

Within the production of evidence, the parties can bring forward the opinion of experts of their choice.

II. 5) Nationality

Experts are of Czech nationality save some exceptions.

II. 6) Recusal by the litigant parties

The parties can call for the expert's recusal if they consider that he is biased, but the decision belongs to the judge.

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

The expert cannot give his opinion if he has a doubt as to his independence or his impartiality as regards the disputes, the parties to the trial, their representatives or any other person involved in the litigation.

II. 8) Possibility of adding another expert

With the judge's authorisation it is possible for the expert to be assisted by another expert. A specialist advisor can be called in to fulfil part of the examination for reasons that must be substantiated in the report. A specialist advisor's involvement does not modify the expert's liability and the advisor's fees can be taken into account only if his involvement was authorised by the jurisdiction.

II. 9) Possibility of being assisted by a colleague

The expert can be assisted by persons without whom his mission could not be carried out. They are paid in accordance with the law.

III. Definition of the expert's mission

III. 1) Who determines the mission?

The judge determines the complete mission and asks specific questions. He can ask the expert to make a mere statement of facts. The parties have the right to ask questions, generally through their lawyers, but the judge decides whether the answer is necessary as to the substance of the case.

III. 2) Type of mission

All

IV. PROGRESS OF THE EXPERT'S MISSION

IV. 1) Judge supervision

The expert is the sole person responsible for the fulfilment of his mission but he must answer the judge's questions and respect the deadlines for his report. The courts control the proportionality and amount of experts' fees.

IV. 2) Form of contradictory procedure

The contradictory procedure is not mandatory.

However the parties to the trial and third parties can be called upon to cooperate with the expert in order to facilitate his work.

IV. 3) Participation in the hearing

When summoned by the judge, the expert presents his report at the hearing.

Y. Close of the expert examination

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

UNSPECIFIED

V. 2) Form imposed on the report

The judge usually summons the expert to present his written report in verbal form although this is not mandatory.

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

Usually the mission ends when the expert is heard by the court and possibly questioned by the parties based on their right to contest the evidence.

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

When a public institution has been appointed to carry out an expert examination, the written report shows the name of the expert who carried out the mission and the name of the person in charge of representing the institution during the hearing.

V. 5) Is a preliminary report mandatory?

It is not standard practice to make preliminary reports.

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

As regards the law, the expert's opinion is an element of proof. The judge assesses the intrinsic value of each piece of evidence and their global value as related to each other. This principle applies fully to expert opinions. The judge is not bound by the expert's findings but he must give due reason not to rely on the conclusions or, on the contrary, explain why he believes they are sufficient evidence.

V. 7) Possibility of a second opinion

The parties have the right to criticise the expert examination as they do any other piece of evidence.

They can rely on their own expert examination which will be considered as another form of written evidence. The judge must decide on the credibility of the expert's opinion and of its value as proof. If necessary, the judge can ask for a counter-examination.

VI. Funding for the expert examination

VI. 1) Security-Payment

The claimant and possibly the other parties must pay an advance on the expert's fees. The deposit is determined by the judge and lodged with the court. The total amount of the expert's fees is determined after the report has been submitted. All the trial costs including the expert's fees are borne by the unsuccessful party.

The State only pays the expert's fees in exceptional cases, for example if one of the parties is a public body or within the context of legal aid.

VI. 2) Determining the amount of payment due

The judge

VI. 3) Possibility of additional payment

YES

VI. 4) Determining fees and costs

Payment is ensured based on a legal scale established by the Ministry of Finance. It varies according to the required level of specialisation for the fulfilment of the mission, the time spent and the difficulty of the question asked. The hourly rate varies between 100 and 350 crown plus additional expenses.

The total amount of the expert's pay is determined after the report has been submitted. All the trial costs including the expert's fees are borne by the unsuccessful party.

The State only pays the expert's fees in exceptional cases, for example if one of the parties is a public body or within the context of legal aid.

VI. 5) Possibility of contesting the fees

UNSPECIFIED

VII. Expert liability within proceedings

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

Expert missions are governed by the law of evidence. Some of the expert's duties are defined by the Code of Civil Procedure and the role of experts and interpreters is defined by a Law (36/1967). All experts, whether they are private or legal persons, must be listed on a register drawn up by the regional courts.

VII. 2) Expert liability

The Code of Civil Procedure grants the parties the right to prosecute the expert for the same damages

as can be claimed against a judge.

The judge can also order a counter-examination which will be entrusted to another expert.

VII. 3) Mandatory insurance for the expert

Court experts must be insured.

VIII. The expert's status

VIII. 1) Existence of selection criteria (accreditation)

All the experts, whether they are natural or legal persons, must be listed on a register drawn up by the regional courts.

After ensuring the required qualifications have been met, the judge delivers the Accreditation to the expert (natural person only).

VIII. 2) Classification of skills

Experts are classified according to their field of expertise and their specialisation, which corresponds to two levels of classification (ex: in the field of transportation, they are listed as air, maritime, rail, road, urban, warehousing, and trans-shipment).

VIII. 3) Required qualifications

Assessment of knowledge

VIII. 4) Grant of accreditation

Jurisdictions

VIII. 5) Possibility of accrediting a legal person

YES

VIII. 6) f) Validity period for the accreditation

Permanent

VIII. 7) Regular assessment tests

The expert's competence is tested every four years by the civil court when the register is renewed, and his activity is monitored qualitatively and quantitatively.

VIII. 8) Supervision of the expert's mission

Qualitative and quantitative

VIII. 9) Expert's activity report

YES

VIII. 10) Code of ethics

According to the above-mentioned Law 36/1967, the expert has the following obligations:

- carry out his examination with diligence and within the set time-limits.
- personally carry out the examination process.
- attend the hearing at the judge's request and present his report orally.
- promptly make the reasons known for which he would be allowed not to submit his report (withdrawal).
- keep the archives of his reports.
- if there is no reason preventing him from presenting the report, he is obligated to do so. He must follow the judge's instructions. He must also sign the written report and authenticate it with a seal.

VIII. 11) Good practice

YES

VIII. 12) Possibility of penalties

The following penalties can be imposed on an expert:

- warning if he does not fulfil his obligations,
- dismissal and striking off from the Register of experts if he fails to meet his obligations after a warning,
- procedural fine imposed by the judge ruling on ordinary issues if the expert does not submit his report in due time or fails to meet one of his obligations.
- two-year prison sentence and prohibition to practice if his conduct constitutes perjury or the presentation of false (grossly deceitful or incomplete) testimony.

An amendment to the law on experts and interpreters is currently being drafted. This law could impose specific administrative infringements and financial penalties that would relate specifically to experts.

VIII. 13) Laws governing the expert's status

Experts are grouped in various associations (Chamber of Experts of the Czech Republic, of Moravia, and of Silesia) that are common law organisations which experts have no obligation to join.

IX. Bibliography

The newest publications in the field are from 2009 (one being a commented text of Act No. 36/1967 Col. *on experts and interpreters*, the other dealing with the position of judicial experts in criminal proceedings), otherwise there is no significant publication activity in the field:

DÖRFL, Luboš. *Zákon o znalcích a tlumočnících: komentář*. Vyd. 1. Praha : C.H. Beck, 2009. 191 s. ISBN 9788074001482.

FRYŠTÁK, Marek; KREJČÍ, Zdeněk. *Postavení znalce v trestním řízení*. 1. vyd. Brno : Masarykova univerzita, 2009. 167 s. ISBN 9788021049550

The Chamber of Judicial Experts of the Czech Republic publishes an internal journal *Expert*, which is available only for the members of the Chamber