

19. POLAND

Contributing correspondents

Stanislas DABROWSKI, *First President of the Supreme Court*

Wasek WIADEREK, *Supreme Court*

Authors

Christian EMORINE, *Consultant*

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

Other administrative order

YES

I. Procedural rules in calling for an expert examination

I. 1) On the initiative of

The Court appoints an expert at the request of one of the parties or on its own motion if it deems it necessary.

I.2) Mandatory expert examinations

Yes, in certain cases: for example in cases dealing with disabled persons, in the division of a joint agricultural property, or in matters of inheritance related to an estate that comprises an agricultural holding.

I. 3) Decision-maker

The judge

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

NO

II. Choice and appointment of the expert(s)

II. 1) Register

Each Regional Court has a register of experts listed for a period of 5 years.

In order to be registered, an expert must be in full possession of his citizens' rights and be at least 25 years old. He must furthermore prove he has the necessary competence in his field of expertise (a requirement that is at the discretionary appreciation of the President of the Regional Court) and guarantee the diligent execution of his missions as well as expressly accept his registration as an expert.

II. 2) Oath

An expert that is thus registered is sworn in once - this is valid for the entire duration of his registration: the oath is not renewed every time the Court is seised. If the need arises, the Court may appoint an "ad hoc" expert who is not registered and who will swear an oath when he is heard by the Court.

II. 3) Choice of the Expert

The judge alone decides, although the parties can suggest the number and names of the experts. The judge is not bound by the parties' requests.

A report by a party-appointed expert is but one element among others that can be produced in support of the party's thesis.

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

YES

II. 5) Nationality

Irrelevant

II. 6) Recusal by the litigant parties

A judicial expert can be recused by a party on the same grounds as a judge, and more generally when there are duly proven facts that may lead to doubts on his impartiality.

After the start of the expert examination, recusal is only possible if the party calling for it proves that the alleged motive was born after the beginning of the proceedings or that it was unaware of it when the expert was appointed.

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

The appointed expert can withdraw on the same grounds as a witness (including in civil proceedings) or because of a material impossibility to carry out the mission.

II. 8) Possibility of adding another expert

The judge can decide to call in several experts, including in identical fields. The expert report must then be signed jointly by all the appointed experts.

II. 9) Possibility of being assisted by a colleague

There is no provision for this particular procedure.

III. DEFINITION OF THE EXPERT'S MISSION

III. 1) Who determines the mission?

The mission is set out by the judge and the expert must conform to it.

III. 2) Type of mission

The judge can modify the terms of the on-going mission and extend the deadline.

IV. PROGRESS OF THE EXPERT'S MISSION

IV. 1) Judge supervision

The judge supervises the progress of the expert's mission and may participate in it. He sets the time limits and can order the disclosure of elements related to the proceedings that will help the expert carry out his mission.

IV. 2) Form of contradictory procedure

This depends on the type of mission assigned by the judge.

“Deferred” contradictory procedure, *ex-post*, by the expert’s presence at the hearing in order to enable the parties to question him.

IV. 3) Participation in the hearing

The expert is summoned to the court hearing to be questioned by the parties.

V. Close of the expert examination

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

Yes, as it puts an end to the civil suit and renders the expert’s mission null.

V. 2) Form imposed on the report

The expert submits a report – the judge decides whether this report is to be written or verbal.

The report must support the expert’s findings.

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

No, as he must present himself to the hearing to be questioned by the parties.

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

UNSPECIFIED

V. 5) Is a preliminary report mandatory?

NO

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

The court is not bound by the expert’s opinion. Case law provides that the judge cannot assess the expert report in fields that are not of his competence but that he must evaluate its degree of persuasiveness by the clear and rational analysis it develops.

V. 7) Possibility of a second opinion

The judge can ask for a second opinion- namely by appointing another expert to this end.

VI. Funding for the expert examination

VI. 1) Security-Payment

If the Court has appointed an expert *ex officio*, advance payment is temporarily made by the Public Treasury. If the expert is appointed by one of the parties, they must pay the advance determined by the judge (maximum time frame is two weeks, Article 130, Code of Civil Procedure).

VI. 2) Determining the amount of payment due

By the judge

VI. 3) Possibility of additional payment

YES

VI. 4) Determining fees and costs

The Court determines the payment based on rates set out by law.

As a general rule, the unsuccessful party bears the burden of legal costs, including the expert's fees.

VI. 5) Possibility of contesting the fees

YES

VII. Expert liability within proceedings

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

Code of Civil Procedure

Law of 27th July 2001 on judicial organisation (Art.157).

Ministry of Justice Decree of 23rd February 2007, on the rules governing ordinary jurisdictions.

Ministry of Justice Decree of 24th January 2005, on Legal Experts.

Ministry of Justice Decree of 9th March 1968, on the fees for bailiffs (Art. 46-48).

Ministry of Health Decree of 27th December 2007, on Experts in the field of alcoholism.

Decree of 26th October 1950 on the fees for witnesses, experts, and parties in judicial procedures.

Ministry of Justice Decree of 18th December 1975, on expert fees in judicial proceedings.

Law of 28th July 2005 on legal fees in civil matters.

There is no representative institutional structure for legal experts as such, but there are private bodies.

VII. 2) Expert liability

The expert is liable for negligence in accordance with ordinary law.

A sworn expert who has voluntarily failed to comply with the rule of sincerity can face criminal charges (with a maximum prison term of three years).

The expert can be fined if he withdraws on no justifiable grounds, if he does not fulfil his mission or is late with no justifiable cause.

VII. 3) Mandatory insurance for the expert

NO

VIII. The expert's status

VIII. 1) Existence of selection criteria (accreditation)

YES

VIII. 2) Classification of skills

UNSPECIFIED

VIII. 3) Required qualifications

Accreditation

VIII. 4) Grant of accreditation

Justice

VIII. 5) Possibility of accrediting a legal person

A qualified legal person can be summoned as an expert. In this case, one or several representatives are appointed to carry out the mission, and will all sign the expert's report.

VIII. 6) Validity period for the accreditation

5 years

VIII. 7) Regular assessment tests

No, but when applying for a renewal of accreditation, the expert must prove that he has improved/maintained his technical competence.

VIII. 8) Supervision of the expert's mission

NO

VIII. 9) Expert's activity report

NO

VIII. 10) Code of ethics

No general code, but expert organisations in each field of competence lay down their own ethical rules. Breaching these rules can lead to a withdrawal of the expert's accreditation.

VIII. 11) Good practice

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VIII. 12) Possibility of penalties

YES

VIII. 13) Laws governing the expert's status

Code of Civil Procedure (Art. 193-1 & following) + Law of 27th July 2001 on judicial organisation (Art. 157).

IX. Bibliography

The answer comprises 18 references, of which only the ones concerning civil procedure have been reproduced below:

J.Turek, Biegły sadowy i jego czynności (*The Judicial Expert and his Role*), Monitor Prawniczy (*Judicial Gazette*) 2007, n° 24.

J.Turek, Rola biegłego we współczesnym procesie (*The Expert's Role in Current Procedures*), Varsovie, 2002.

Major specialist journals and periodicals concerning the work of experts:

- Archiwum Medycyny Sądowej i Kryminologii [Forensic Medicine & Criminology Archive];
- Paragraf na drodze [Article on the Road];
- Prawo i Medycyna [Law & Medicine];
- Problems of Forensic Sciences;
- Problemy Kryminalistyki [Problems of Criminalistics];
- Prokuratura i Prawo [Prosecution Service & Law].

List of selected recent publications on experts:

1. Bucoń G., Dopuszczalność «opinii prywatnej» w procesie karnym [The Admissibility of a "Private Expert Report" in Criminal Proceedings], Państwo i Prawo [The State & Law] 2009, No. 3;
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8. Skubisz S., Dowód z ekspertyzy pism patologicznych [Expert Evidence Concerning Pathological Writing], Cracow 2004;

9. Tomaszewski T., Biegły i jego opinia w nowym kodeksie postępowania karnego [Expert and Expert Report in the New Code of Penal Procedure], Państwo i Prawo [The State & Law] 1998, No. 5;
10. Tomaszewski T., Dowód z opinii biegłego w procesie karnym [Expert Evidence in Criminal Proceedings], Cracow 1999;
11. Tomaszewski T., Przesłuchanie biegłego w postępowaniu karnym [Hearing of an Expert in Criminal Proceedings], Warsaw 1988;
12. Turek J., Biegły sądowy i jego czynności [Judicial Expert and His Duties], Monitor Prawniczy [Juridical Gazette] 2007, No. 24;
13. Turek J., Rola biegłego we współczesnym procesie [The Role of an Expert in Contemporary Proceedings], Warsaw 2002;
14. Widał T., Ekspertyzy irrelewantne [Irrelevant Expert Reports], Prokuratura i Prawo [Prosecution Service & Law] 2007, No. 10;
15. Widła T., Uwagi o przeprowadzaniu dowodu z opinii biegłego [Remarks on Expert Evidence]. Palestra [Bar] 2002, No. 3-4;
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17. Ziomba J., Przeprowadzenie dowodu z opinii instytutu naukowego lub naukowo-badawczego w procesie cywilnym - wybrane zagadnienia [Expert Evidence Based on Expert Report Prepared by a Scientific Institute or a Scientific Research Institute in Civil Proceedings: Selected Issues], Radca Prawny [Legal Counsel] 2005, No. 1;
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