

20. PORTUGAL

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Other administrative order

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I. Procedural rules in calling for an expert examination

I. 1) On the initiative of

The expert examination is called for on the initiative of a party or of a judge.

When it is requested by a party, the party must define the factual elements on which the expert will have to give an opinion.

If the judge believes the expert's opinion will be useful he must hear the other party first. The expert examination can be based on facts put forward by both parties.

I.2) Mandatory expert examinations

I. 3) Decision-maker

The judge

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

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II. Choice and appointment of the expert(s)

II. 1) Register

The judge gives priority to appointing an establishment, a laboratory, or a public service, failing which he appoints an expert among people reputed competent in the applicable field.

If it is necessary to call for experts in various specialisations, the judge appoints the experts.

Forensic reports are drawn up by forensic laboratories or expert doctors. Expert opinions related to other specialisations are carried out by laboratory experts or official services.

Magistrates and diplomats cannot be appointed as experts.

II. 2) Oath

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II. 3) Choice of the Expert

The judge asks the competent authority to suggest experts according to the needs of the case.

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

If only one expert is to be appointed, the judge must ask the parties' opinion (they can suggest an expert). If the parties agree on an expert, the judge must appoint said expert unless there is sufficient reason to doubt he is fit or competent for the task.

If one of the parties asks for a panel of experts to be appointed, and if the parties agree on the names of the experts, the judge must appoint them unless there is sufficient reason to doubt they are fit or competent for the task. If the litigants do not agree on the experts, each party as well as the judge must select one. If there are more than 2 parties, the majority of the parties decides. If they cannot reach a majority, the judge decides.

II. 5) Nationality

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II. 6) Recusal by the litigant parties

Experts are subject to the same rules as judges.

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

Persons who are called upon may refuse to act as experts for personal reasons.

II. 8) Possibility of adding another expert

The expert opinion may be given by 1 to 3 experts who may work together or separately, or by assigned topics. The expert examination is carried out by a panel if it is too complex, if it involves several specialities or if one of the parties requests it.

II. 9) Possibility of being assisted by a colleague

The expert may request all the necessary means for the fulfilment of his mission – for example medical or other examinations.

III. DEFINITION OF THE EXPERT'S MISSION

III. 1) Who determines the mission?

The judge determines the subject of the expert examination.

III. 2) Type of mission

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IV. PROGRESS OF THE EXPERT'S MISSION

IV. 1) Judge supervision

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IV. 2) Form of contradictory procedure

The expert must advise the parties as to the dates and hours at which the expert meetings will take place if they can legally participate in these meetings.

The parties can participate in the expert examination and be assisted by a technician unless said technician has a higher level of expertise than the appointed expert or if he can compromise a secret protected by one of the parties.

The parties must reply to the expert's questions and can make all the observations they deem useful.

IV. 3) Participation in the hearing

The parties or the judge can ask the expert to participate in a hearing. In this case, experts that belong to a public body are heard by video conference from their workplace.

The experts must be present at the final hearing if one of the parties or the judge has requested their presence, and they must then give their testimony under oath. In this case, experts that belong to a public body are heard by video conference from their workplace.

V. Close of the expert examination

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

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V. 2) Form imposed on the report

The result of the expert examination is finalised in the expert's report. If there are several experts and they do not agree, they must provide reasons for their disagreement.

The judge does not play any part in the expert's written report.

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

If the expert opinion cannot be concluded with the submittal of the report, the judge sets a time limit of no more than 30 days. This deadline must be duly reasoned and can only be renewed once.

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

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V. 5) Is a preliminary report mandatory?

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

NO

V. 7) Possibility of a second opinion

When the final report has been submitted, the parties can file a complaint if they consider that there has been a lack of due diligence, if they believe that the report is unclear or contradictory on certain points or if the expert's findings are not supported by enough facts. If the claims are valid or if the judge himself deems it necessary, the judge will ask the expert to complete, clarify or better justify his report.

VI. Funding for the expert examination

VI. 1) Security-Payment

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VI. 2) Determining the amount of payment due

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VI. 3) Possibility of additional payment

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VI. 4) Determining fees and costs

The expert's fees are determined by the judge within the limits provided for by law and are paid by the party who requested the expert's opinion. The cost of the expert's mission is borne by all the parties if they all have an interest in it or if they will all benefit from it or if it is impossible to determine in whose best interest it is to carry out the examination.

VI. 5) Possibility of contesting the fees

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VII. Expert liability within proceedings

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

The Civil Code, the Code of Civil Procedure and the Regulation on legal costs.

The expert must accomplish his mission in an efficient way. He can request all the necessary means to complete his task successfully and all the elements pertaining to the legal proceedings. If in order to fulfil his mission the expert must destroy or modify an object, he must first ask the judge for permission to do so. If this is the case, the proceedings must contain a description and if possible a photograph of the object. If the object is a document, the proceedings must keep a certified copy of it.

VII. 2) Expert liability

An expert can be fined if he does not cooperate with the Court. The judge can recuse him if he does not complete his examination and submit his report within the set time limits.

VII. 3) Mandatory insurance for the expert

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VIII. The expert's status

There are no expert associations.

VIII. 1) Existence of selection criteria (accreditation)

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VIII. 2) Classification of skills

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VIII. 3) Required qualifications

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VIII. 4) Grant of accreditation

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VIII. 5) Possibility of accrediting a legal person

The expert can be a legal person.

VIII. 6) f) Validity period for the accreditation

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VIII. 7) Regular assessment tests

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VIII. 8) Supervision of the expert's mission

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VIII. 9) Expert's activity report

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VIII. 10) Code of ethics

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VIII. 11) Good practice

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VIII. 12) Possibility of penalties

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VIII. 13) Laws governing the expert's status

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X. Bibliography