

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Civil judicial experts in
cross-border litigation:
towards the 'European
judicial expert'**

In-depth analysis for the JURI Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

LEGAL AFFAIRS

Civil judicial experts in cross-border litigation: towards the 'European judicial expert'

IN-DEPTH ANALYSIS

Abstract

Upon request by the JURI Committee, this in-depth analysis examines the rules applicable to judicial experts in the Czech Republic as well as the possibilities of establishing a list of European experts in the EU. Judicial expertise in cross-border litigation in the Czech Republic may be performed only by experts registered in a special national public directory. The existing European legal standards do not provide any satisfactory solution for cooperation between the courts and an expert from another Member State. The solution lies in unification of the basic standards for selection of an expert as well as the processing of the expert opinion. It will then be possible to establish a single list of European experts, which would be based on the harmonised national lists.

DOCUMENT REQUESTED BY THE COMMITTEE ON LEGAL AFFAIRS

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LIST OF ABBREVIATIONS

CEPEJ European Commission for the Efficiency of Justice

EEEI The European Expertise and Expert Institute

EGLE European Guide for Legal Expertise

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TABLE 1:

Numbers of court experts in the Czech Republic **7**

TABLE 2:

Number of submitted expert opinions **8**

EXECUTIVE SUMMARY

Experts in cross-border litigation in Czech courts

An expert opinion is the result of the methodological activities of a qualified person, the conclusions of which can be reliably verified. Experts participating in legal proceedings are required to draw up an expert's opinion according to the rules laid down in a special legal regulation, and expert activities may be performed only by experts or expert institutions registered in a special national public directory.

The need to obtain evidence by means of an expert's opinion within judicial proceedings abroad arises in cases where an expert needs to undertake a local investigation on the territory of another Member State (for example, examination of an immovable asset abroad, or the psychological examination of a minor residing in another Member State).

Such procedural situations are, of course, resolvable for the Czech courts, but none of the available solutions are entirely without difficulties. The option of request for assignment and elaboration of an expert's opinion in accordance with Council Regulation (EC) No 1206/2001¹ is not used, since for the purposes of this type of evidence that regulation is not applicable. The most frequent way to associate an expert from another Member State in cross-border litigation is to appoint an expert for each individual case (ad hoc). In such cases the court is obliged to examine the expertise of an expert whose appointment is proposed, and in particular that expert's additional capacity to perform his or her task, including factors such as impartiality. This may give rise to a prolonged phase in the court proceedings (especially should one of the parties object to the appointment of the expert).

Towards the European list of experts

The current work of the European Commission for the Efficiency of Justice of the Council of Europe and the European Expertise and Expert Institute indicates a possible direction, which lies in unification of the basic standards for selection of an expert as well as for the elaboration of the expert opinion, which would ensure that persons can bring a sufficient professional and ethical level of expertise to cross-border court proceedings. It will then be possible to establish a single list of European experts, based on the national lists - thus securing observance of the specified standards - and managed by a designated authority. The authority would not necessarily have to be the public authorities. It could even be the professional chambers, which are engaged in the specific issues concerned and are able to guarantee the professional and ethical standards of the registered experts.

There are some questions to be resolved. To ensure these standards and the European list of experts, harmonisation of Member States' legislation will be needed. However, the mere availability of the lists of experts in a single virtual space would represent progress and could increase the courts' awareness of the available experts from the necessary field of study who may be invited to submit an expert's opinion according to the national rules.

¹ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, p. 1.

1. EXPERT ACTIVITY IN THE CZECH REPUBLIC: GENERAL CONCEPT OF THE COURT EXPERT'S ACTIVITY AND STATISTICAL DATA

In the Czech Republic, submission of an expert opinion in the course of court proceedings is considered as a separate type of means of proof. Both of the main procedural codes² state that the submission of an expert opinion shall be reserved for situations where a professional assessment of major issues is needed in order to establish the facts. This includes cases such as determining the causes of death, the extent of injury inflicted, the amount of damages, the value of a contested asset or the educational assumptions of a child's parents.

Experts are usually called to process an expert opinion within court proceedings, either by the parties to the dispute or directly by the court. In both cases, they are required to execute the expert opinion according to the rules laid down in a specific legal regulation³. In court proceedings the participation of court experts is often crucial, and is becoming more frequent owing to the fact that controversial issues of a professional nature tend to be assessed in the framework of a trial. The great advantage of an expert opinion in legal proceedings is that it consists of evidence submitted in a context of impartiality by someone who has no interest in the outcome of the proceedings. Also, the expert opinion is the result of the methodological activities of a qualified person, the conclusions of which can be reliably verified.

To sum up, the basic characteristic features of an expert opinion are its impartiality, expertise, and reviewable character. This makes the expert opinion an evidence of high probative value. Therefore, in the Czech Republic a large number of experts from various fields are engaged for the performance of expert activities, serving hundreds of thousands of expert opinions per year for the purposes of court proceedings and other legal acts.

The numbers of court experts in the Czech Republic are shown in the chart below.

Table 1: Numbers of court experts in the Czech Republic

Number of court experts			
Year	2010	2011	2012
Number of experts	10 850	10 808	10 636

Source: Ministry of Justice

² Act No 99/1963 Coll., the Code of Civil Procedure, and Act No141/1961 Coll., the Code of Criminal Procedure

³ Act No 36/1967 Coll., on Authorised Experts and Interpreters

Table 2: Number of submitted expert opinions

Number of expert opinions			
Year	2010	2011	2012
Number of expert opinions in total	324 641	305 485	313 991

Source: Ministry of Justice

In some European countries, the Czech Republic being among them, expert activities may be performed only by experts or expert institutions registered in a special public directory, and in compliance with a specific law (the Act on Authorised Experts and Interpreters). To be registered in the list, a natural or legal person must comply with the specific statutory prerequisites, which consist in particular in expertise and impartiality. In other European countries an expert does not need to be registered in a public list to perform this work, but must nonetheless be able to prove his or her expertise and impartiality.

2. LEGISLATION OF COURT EXPERTS' ACTIVITY IN THE CZECH REPUBLIC

2.1. Prerequisites for being entered in the public list of experts and supervision of the execution of experts' activities

The essential prerequisites for the exercise of expert activities in the Czech Republic are the following: citizenship of the Czech Republic (or, for other EU citizens, possession of a residence permit), legal integrity, full liability, the necessary knowledge of and experience in the field, having passed a special professional training in expert activities in respect of appointment for the field of study to which that training applies, and the necessary personal qualities for proper performance of expert activities. The subsequent selection of persons meeting the criteria is carried out by the public authorities (Minister of Justice, presidents of regional courts) which have been granted supervisory competences over the performance of expert activities.

The most important requirement in the selection of the experts is their expertise. The assessment of their expertise is based on proof of higher (university) education, proof of professional competence and formal practice acquired in the relevant field. In some expert fields completion of specialised studies is required (for example, the assessment of road traffic accidents) and last but not least, the practical skills of the applicants for registration in the list of experts are examined as well, for example by submission of the test opinions of new applicants and verification of knowledge of the legislation regulating the activities of experts and of the procedural legislation. Specific information on educational qualifications, the minimum experience in the field required and the procedure for processing a request for appointment of experts are currently contained in the new instructions issued by the Minister of Justice (No 90/2012-OSD-ZN, 30 April 2012).

2.2. List of experts

The list of experts is a public list, which is kept by the regional courts. The experts are registered according to the region of their head office. Registration of experts is structured according to the individual disciplines (such as economics), which are further divided by sector (for example, prices and estimates) and specialisation (for example, the valuation of enterprises) for the performance of expert activities. The list is kept in electronic form and is accessible via the portal of the Ministry of Justice of the Czech Republic⁴. The list of disciplines, sectors, and specialisations is contained in the Annex to the implementing decree.

Experts may submit expert opinions only in the discipline and the sector for which they are registered in the list of experts. Any deviation of an expert from the field of his/her expert activities, in other words those for which he/she is registered, is considered a serious disciplinary offence, which may result in the expert being removed from the list.

⁴ www.justice.cz

2.3. Specific duties of an expert

The obligations of a judicial expert are further regulated by the Act on Authorised Experts and Interpreters⁵. This act imposes special obligations upon the experts on submission of their expert opinions. In the oath that an expert swears before the public authority, he/she promises to carry out his/her expert activities in accordance with the law and to perform them impartially, according to the best of and using in full his/her knowledge and maintaining confidentiality⁶.

The expert is therefore obliged to comply with a binding form of expert opinion and to observe procedures during its elaboration which ensure an impartial and fully professional approach allowing him/her to come to a correct conclusion. The expert's conclusion must be reviewable by standard scientific or professional methods or by the method which the expert describes, and which leads to a vocational objective conclusion. The expert adds the expert's clause to the expert opinion, which contains the information of the expert's field of focus and the specified serial number of the expert opinion, under which it is registered in the expert's records (The Court Expert's Book). The expert is also obliged to respect the procedural rules of the court proceedings and the instructions of the court (refer to more detail further in the text).

The expert has a further obligation to carry out expert activities properly and within the specified period of time⁷, the obligation to submit the expert's opinion, if he/she has been appointed as an expert in proceedings before the public authority and to execute it personally. If the expertise of an expert is insufficient to cover the whole specified issue, he/she may take a consultant to help, activity of whose is, however, principally only of a support character, while the appointed expert shall be the person responsible for conclusions of the expert's opinion as such.

Therefore, in situations where the specified issue encroaches to various disciplines it is more preferable to establish more experts to cover assessment of technical issues within the individual fields of expertise. In some cases, the legislation directly imposes the obligation of the state authority to establish two experts for assessment of some of the issues. Then they draw up the expert's opinion jointly.

Finally, the experts also have some organisational responsibilities. These include, in particular, the obligation to keep the Court Expert's Book correctly, in which they record all of their expert's assignments according to the established procedure, and to submit the Court Expert's Book to regular inspection to the Regional Court (the ministry), to report the change of residence, use the expert's clause and seal in accordance with the law, and account for remuneration and costs of an expert associated with elaboration of the expert's opinion duly and properly.

2.4. Fundamental requirements for the expert's opinion

The essentials of the expert's opinion consist in compliance with: 1) a specific legal form; 2) the correct methodological procedure to be followed by an expert; and 3) the rules of procedure for submission of the expert's opinion.

An expert's opinion may be submitted either orally as part of the judicial record, or in written form. In the latter case, the documentation shall include: the assignment of the expert's task, a list of the supporting documents on the basis of which the expert

⁵ Act No 36/1967 Coll., on Authorised Experts and Interpreters.

⁶ § 6 of Act No 36/1967 Coll., on Authorised Experts and Interpreters.

⁷ § 8 of the same Act.

conducted his/her examination, the record of how the expert arrived at the opinion, the evaluation of the documents, and the opinion proper, which as a rule contains the answer to the specified technical question. In the case of a written opinion, the expert shall affix his/her manuscript signature, an official stamp and the expert's clause. The expert shall bind all the documents with a string and seal them with an official seal⁸.

In addition to the formal requirements, however, an expert's opinion must comply with the correct methodology and procedure of an expert. As the expert's opinion must result in a professionally correct, convincing and reviewable conclusion, it needs to be, in its structure and conclusions, comprehensible, correct and reviewable (i.e. by any other expert or institute in proceedings before a state authority). The opinion should be exhaustive and correspond to the entirety of the expert's assignment. However, the expert shall not, either in his/her activities or in his/her conclusions, exceed the field of his/her competence for which he/she is registered in the list of experts. Besides, an expert in the Czech Republic is not entitled to deal with the legal assessment of the case during elaboration of the opinion, since it belongs to the court only.

The expert provides, in essence, a process of expendable evidence, as it provides the court with information which he/she has acquired through the expertise-based researching of a particular assignment (in contrast, the evidence arising from the examination of a witness is procedurally irreplaceable, since it gives information about what a person at a certain place and time experienced). Therefore, the methodological procedure of an expert and the reviewability of his/her procedure are given emphasis as a major requirement having a direct impact on the evidentiary proceedings of the judicial process.

The procedure of an expert in elaboration of the opinion must conform to the procedural rules: in particular, the expert must respect the principles of impartiality and professional objectivity throughout the course of the judicial proceedings, in order to secure the principle of a fair trial.

2.5. Supervision of the performance of expert activities, disciplinary liability, and proceedings in the matter of experts

The public authorities (the Minister of Justice and the presidents of the regional courts), in addition to deciding on admission to the list of experts, also supervise the experts' activities. In the event of a breach of the specific duties of an expert, they also initiate disciplinary proceedings and decide on the disciplinary responsibility of experts and expert institutes. Furthermore, the presidents of the regional courts carry out, through the departments responsible for experts and interpreters, the inspection of the court expert's books and oversees the fairness of the fees charged by the experts.

Breach of the specific duties of an expert leads to disciplinary responsibility, and the law determines the category of administrative offences in relation to expert activities⁹. Their merits lies in violation of the basic obligations of the expert as listed above. The typical penalty for committing an offence, administrative or otherwise, is a fine of CZK 100 000 (EUR 3 650) or CZK 200 000 (EUR 7 300), imposed on the basis of an administrative procedure. An expert or expert institute may be removed from the list for repeated or serious breaches of their obligations.

An expert or expert institute has the right to appeal to the Minister of Justice against a decision arising from disciplinary proceedings. In case of unsuccessful appeal proceedings,

⁸ §13 and following sections of Decree No 37/1967 Coll., on implementation of Act No 36/1967 Coll., on Authorised Experts and Interpreters

⁹ § 25a and following sections of Act No 36/1967 Coll., on Authorised Experts and Interpreters

judicial review of the administrative decision by means of administrative action is not excluded¹⁰.

2.6. Right to remuneration and reimbursement of costs associated with filing of the opinion

An expert shall be entitled to remuneration for submission of expert opinions assigned to him or her. The amount and the binding tariff for the expert opinions are determined by the courts and other public authorities on the basis of the implementing decree attached to the Act on Authorised Experts and Interpreters¹¹.

The court which appointed the expert for submission of an expert opinion determines the expert's remuneration in the context of the court proceedings. The appointing authority in this case examines the expert's billing and evaluates both the scope of the expert's work and the level of the fee chargeable in accordance with the degree of specialisation necessary for processing the task. The expert should therefore charge the number of hours needed for drawing up the opinion and submit a proposed fee, on the basis of which the actual remuneration will be calculated according to the degree of specialisation.

The expert is entitled to ask for reimbursement of the expenditure incurred in order to carry out the expertise, in particular travel expenses, lost wages for time spent in court, substantive costs and the costs for inclusion of a consultant where agreed to by the contracting authority.

When deciding on the amount of remuneration, the public authority is not bound by the amount charged by the expert: it may conclude that the submitted billing does not correspond to the scope of the work performed, and may also choose a different amount in line with a specific rate of pay for an expert action. In case of extraordinary difficulty of the task the expert's remuneration may be increased, as well as the contrary: in case of a breach of obligations on the part of an expert (for example, undue delay in delivery of the opinion) the public authority may reduce the expert's remuneration appropriately¹².

¹⁰ Proceedings following a petition against a decision of a public authority may be heard pursuant to Act No 150/2002 Coll., Judicial Procedure Code

¹¹ See §25 of Decree No 37/1967 Coll., on implementation of Act No 36/1967 Coll., on Authorised Experts and Interpreters

¹² § 21 to 27 of the same decree

3. EXPERTS IN THE JUDICIAL PROCESS IN THE CZECH REPUBLIC

3.1. Expert opinions assigned by the court

Assignment of an expert opinion to an expert, participation of an expert in court, and the process of evaluation of the expert's opinion as evidence within court proceedings are further governed by specific procedural rules, in particular the Code of Civil Procedure (Act No 99/1963 Coll.), the Code of Criminal Procedure (Act No 141/1964 Coll.), and the Administrative Procedure Act (Act No 500/2005 Coll.).

The court will invite the expert to submit an expert opinion in those cases where expertise is necessary for establishing the facts. When seeking a specific expert, the court uses the lists of experts, which catalogue experts by fields and sectors, with a description of their specialisation (this information is usually optional), for each district court circuit¹³.

The court names the selected expert specifically in the call for submission of an expert opinion, and describes the field of expertise corresponding to the opinion to be drawn up, a task that the expert is assigned (usually in the form of a set of questions). The court also determines the time limit within which the opinion is to be delivered to it.

Example of an assignment of an expert opinion by the court:

The court appoints the expert..... (address)born on ... in the field of: economics; sector: prices and estimates, specialisation: prices and estimates of immovable assets, to submit an expert opinion within a time limit of 60 days from receipt of this resolution, in 3 copies, the task of the opinion being: to assess a habitual price for the land..... registered.....at the Land Registry Office for Ústí nad Labem Region.

In order to respect the principle of impartiality of the judicial process, the call for submission of the expert opinion is delivered to both the parties to the proceedings and the expert, and the parties must be informed in the call for submission of their right to raise objections to the person of the expert in respect of his/her impartiality, and, as the case may be, to specify the reasons for which the expert should be excluded from submission of the opinion. The expert is also obliged to inform the assigning authority of the reasons for exclusion from submission of the opinion, if any exist. The court which appointed the expert shall then decide whether the appointed expert is or is not biased in the case in question.

An expert may ask the parties to the proceedings to provide assistance for obtaining the necessary base materials required for the opinion, or may request the court to supply the necessary documents. After submission of the opinion, the expert is generally required by the court to attend a hearing at which his/her role of expert is confirmed. The expert may make amendments to his/her opinion directly before the court, or may ask for additional time to complete the opinion in writing, if the proceedings bring new facts to light.

In the event of a breach of the procedural obligations, the expert may be asked to pay a procedural fine in accordance with the procedural regulations of section 66 of the Code of Criminal Procedure or section 53 of the Code of Civil Procedure. An expert may also appeal against the decision concerning his/her fees, the expert shall also have the right to appeal

¹³ Reference for the specific form available on the server of the Ministry of Justice (www.justice.cz): [http://datalot.justice.cz/justice/repznatl.nsf/\\$\\$SearchForm?OpenForm](http://datalot.justice.cz/justice/repznatl.nsf/$$SearchForm?OpenForm)

against such decision. Once the decision on fees has acquired legal force, the expert has the right to be paid the fee awarded without undue delay.

3.2. Expert's opinions assigned by the parties to the proceedings

In the Czech Republic, it was possible in the past to make use of the evidence provided by the expert's opinion within the judicial proceedings solely on the basis of the opinion given by an expert appointed by the court. More recently, the legislation has been changed¹⁴, and it is now possible to admit the opinions of the experts assigned by the parties to the dispute in addition to the opinions of the experts appointed by the court. Though the wording of the law hitherto applicable did not preclude using an expert's opinion drawn up in another proceedings as evidence, for any of the parties on the basis of their agreement, such an expert opinion was considered only as a document within the evaluation of the evidence¹⁵. This, however, significantly devalued the probative value of an expert's opinion drawn up for a party to the court proceedings.

Thus, court orders now provide for the possibility of submission of the expert's opinion assigned by a party to the proceedings, if it contains a clause with a statement by the expert that he/she is aware of the consequences of knowingly submitting a false opinion. In such cases, the court proceeds to implement the evidence exactly as if it were an expert's opinion requested by itself. The procedural rules allow the expert, in the process of drawing up the opinion assigned by the parties to the proceedings, to inspect the court files, or to get acquainted with the information necessary for elaboration of the expert's opinion. This new legislation, however, still encounters a number of questions and uncertainties in the judicial practice, as the method of elaboration of the opinion is identical with the method of drawing up the opinion assigned by the court, but the possibility for an expert to obtain supporting evidence, e.g. from the other party to the dispute, or to oblige that party to cooperate in other ways in the drawing-up of the opinion, is not regulated by the law in any way. Therefore, there is a risk that the final opinion will be incomplete, and therefore more easily challengeable as evidence.

The Czech legal order, therefore, will have to look for inspiration abroad to regulate submission of this type of expert's opinion in more detail, as it is quite common there for an expert's opinions to be requested by a party to the dispute.

¹⁴ § 127a of Act No 99/1963 Coll., Code of Civil Procedure as subsequently amended by Act No 218/2011 Coll.; §110a of Act No 141/1961 Coll., Code of Criminal Procedure as subsequently amended by Act No 65/2001 Coll.

¹⁵ Compare, e.g., the statement of the Supreme Court plenary Pls 3/80 dated 23.12.1980, made public under No 1 Coll. of the Judicial Decisions and Statements, or the resolution of the Supreme Court dated of 3.9.2009 in Case Ref. No. 25 Cdo 2398/2009.

4. THE CURRENT PROCEDURAL OPTIONS FOR ADDRESSING THE CROSS-BORDER COOPERATION OF THE CZECH COURTS WITH EXPERTS FROM EU MEMBER STATES

The need to obtain evidence by means of an expert's opinion within judicial proceedings abroad arises in cases where an expert needs to make a local investigation on the territory of another Member State of the EU (for example, examination of an immovable asset abroad or a psychological examination of a minor child residing in another Member State) or a special knowledge of the local situation is required for elaboration of the expert's opinion (overview of usual prices; processing of materials available abroad).

Such procedural situations are, of course, resolvable for the Czech courts, but none of the available solutions are entirely without difficulties. The following procedures may be taken into account, for example:

- a) Request by the relevant court for evidence under Article 4(16) of Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- b) Appointment of the Czech expert (or expert institute) with the agreement of the consultant from the other Member State;
- c) Appointment of an expert on an ad hoc basis from the other Member State.

According to the procedure under a), a request for assignment and elaboration of an expert's opinion in accordance with Council Regulation (EC) No 1206/2001 cannot be made, since for the purposes of this type of evidence that regulation is not applicable. This is for several reasons. The assignment of the expert's opinion by the court requires, as a rule, consultation of the court with the parties. Provision of documents by the expert subsequently requires cooperation with the court before which the proceedings are brought, and the questioning of an expert on the proposed opinion generally leads to further procedural proposals, which are assessed by the court where the proceedings are held. It is not possible to use a videoconference connection (as widely used for examination of witnesses) for the purposes of drawing up an expert's opinion: nor may any other means of modern communications technology be used. The procedure according to the regulation therefore appears to be too complicated.

According to the procedure under b), permission for the consultant to resolve the sub-issues may be granted under section 10(2) of Act No 36/1967 Coll. on Authorised Experts and Interpreters. This consultation, however, has only a limited scope since according to the relevant case-law¹⁶ the role of the consultant is to address only a sub-problem of the court's specified question, which forms the basis for the findings by the court-appointed expert. The Czech expert, therefore, is liable also for the accuracy of the data of documents obtained from abroad, as well as for the conclusions of his/her consultant. In the processing of the documents obtained in this way in the other Member State, and the formulation of the conclusions, the dependence of the expert on data obtained mostly from the foreign consultant may raise difficulties, despite the fact that the expert would need to have the option open of finding a consultant abroad.

As regards the procedure under c), It would probably be the most appropriate where there is a need for an expert opinion from another Member State if an expert registered on the list of experts of such a Member State (or any other respected expert) is appointed by the Czech court for each individual case (ad hoc).

¹⁶ Compare, e.g., Decision of the Czechoslovak Supreme Court of 3 To 12/1988, or the published judgment of the Regional Court, České Budějovice, 4 To 70/98

The rule of appointment of experts ad hoc is applied only exceptionally by the Czech courts, for example, in situations where there is no expert at all registered for the relevant field of study, or where disproportionate difficulties would be associated with the expert's participation in court. In such cases the court is obliged to examine the expertise of the proposed expert, and in particular the expert's additional capacity to perform his/her task (factors such as impartiality). This may initiate a prolonged phase in the court proceedings (especially in case of objection by one of the parties to the appointment of such an expert). Also, the requirements regarding expertise for elaboration of the opinion may differ considerably among Member States. After verification of eligibility of the chosen expert for submission of an expert's opinion, the expert swears an oath, pursuant to section 6 of Act No 36/1967 Coll. on Authorised Experts and Interpreters, for the individual case for which he/she was appointed, and is obliged to proceed in accordance with that Act, in the same way as an expert registered on the list would proceed.

This requirement of legal process for an expert appointed ad hoc from another Member State appears difficult to meet because the ordinary and usual procedure according to the law applying in the territory of the Czech Republic is unlikely to be known to the expert. This may cause insurmountable procedural difficulties (e.g. in case of faulty procedure on the expert's part). However, such procedure by the Czech court will be considered admissible.

5. THE NEED FOR UNIFICATION OF STANDARDS GOVERNING EXPERTS AT EUROPEAN LEVEL

5.1. Needs and difficulties associated with the unification of experts' activities

It becomes obvious that the employment of experts from other EU Member States is not regulated in the Czech legal system. This fact leads to considerable difficulties in disputes with a foreign element. The same situation applies where the opinion of an expert from outside the territory of the Czech Republic is necessary.

The existing European legal standards do not provide any satisfactory solution to facilitate cooperation between national courts and experts from other Member States. It is therefore highly desirable that experts' activities in the context of judicial proceedings in the Member States be regulated in a manner that would allow courts in one Member State to employ experts from another.

Unification of experts' activities is not an easy process, since there are a number of practical and legislative difficulties.

For example:

- binding lists of judicial experts are not anchored in all Member States' legal systems;
- different criteria tend to be applied for inclusion on the list of experts (conditions of registration);
- there is a need to standardise both the formal elements of expert's opinions as submitted and the fundamental principles of procedure of judicial experts.

In addition to these crucial issues that will need to be addressed during the process of unification of expert activities in Europe, there are a number of other less essential issues, which, for the sake of brevity, we will not describe here in greater detail.

5.2. Draft Recommendations of the European Commission for the Efficiency of Justice (CEPEJ)

The Draft Recommendations of the CEPEJ of 8 October 2014 for the participation of technical experts in judicial proceedings with respect to the member states of the Council of Europe is a significant source for the search for good common practice for judicial experts¹⁷.

This document methodically summarises information on the good practices of the member states of the Council of Europe, and clarifies: 1) the role of experts in court proceedings; 2) the criteria for selecting experts; 3) formal aspects of the expert opinion; and 4) the special rights and obligations of an expert and his/her responsibilities.

This draft recommendation is unique in its tight-fitting naming of the basic legal and practical issues consideration to be applied by the Council of Europe member states in their national legislation and procedural practice. They may therefore serve as source of ideas

¹⁷ CEPEJ-GT-QUAL (2014)10 Rev1, Strasbourg, 8 October 2014:
[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2014\)14&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2014)14&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

for the relevant steps for unification of the European expert activities as well as providing arguments for the necessary degree of seriousness when dealing with Member States.

5.3. EURO-EXPERT and EGLE

The European Expertise and Expert Institute (EEII) deals with the unification of the process in the EU Member States. Its final report on the project 'Euro-Expert' formulates the basic criteria for facilitating expertise procedures in proceedings in which the need arises for the involvement of experts from other Member States. On the subject of the participation of judges, experts, researchers and practising lawyers from the EU-27, the EEII made the following suggestions:

- I. Establish the status of the European court expert.
- II. Harmonise the Member States' different systems of lists of registered experts, and where necessary create such a list in those Member States where it is still lacking.
- III. Strengthen the role of the courts in the assignment of expert opinions, as well as control over the proper and timely filing of opinions.
- IV. Establish a basic structure for expert opinions that will be generally accepted by the courts of all Member States.

The aim of these recommendations is to harmonise the legislation of the Member States, in order to enable judges from individual Member States to exercise the option of selecting judicial experts from beyond the national framework from a single list including respected experts and ethically acting personalities, respecting the principle of impartial and independent judicial proceedings.

The report also pointed up the limits of the expert's liability for the technical conclusions serving as a basis for a court decision, and on the need to strengthen the procedural position of the court in relation to its competence to assign elaboration of the expert's opinion on its own initiative, as well as to replace an expert in case of misconduct, delayed performance or disproportionate costs.

The Euro-Expert Project suggested possible solutions to the current differences in approach to the selection of judicial experts in English-speaking countries and the countries governed by continental legal systems, which would consist in determination of the authority (not necessarily just the authority of the state) responsible for managing the lists.

The EEII followed up that report with a project known as EGLE (European Guide for Legal Expertise) between 2014 and 2015, the aim of which was to prepare draft recommendations to the European Commission on the subject of the expert opinion.

The working groups consisted once again of judges, researchers, experts and practising lawyers from a number of Member States, with the brief of considering the following areas:

1. Appointing an expert: mission and expectations;
2. Expert proceedings and the expert's report;
3. Qualifications, competence, and the evaluation of experts;
4. The status and ethics of experts: free exercise and liability.

The conclusions of these working groups and a discussion of their findings will be presented at the joint conference to be held in Rome on 29 and 30 May 2015, and the final text of the recommendations may be expected in September 2015.

6. CONCLUSION: DO THE COURTS TRULY NEED 'EURO-EXPERTS' AND 'EURO-EXPERT OPINIONS'?

The final question can be answered by another question. Do we need a faster and more predictable course of judicial proceedings, in which it is necessary to use the knowledge of experts from other Member States? If so, then the only option is to move forward in finding ways to facilitate cooperation between the courts and experts from the Member States.

The current work of the CEPEJ and the European Expertise and Expert Institute indicates a possible direction, which lies in unification of the basic standards for selection of experts as well as the processing of the expert opinion. We need standards which would ensure a sufficient professional and ethical level of expertise in cross-border court proceedings. It will then be possible to establish a single list of European experts, based on the national lists - thus securing observance of the specified standards - and managed by a designated authority. The authority does not necessarily have to be the public authorities: it could also be the professional chambers, which are engaged in the specific issues and are able to guarantee the professional and ethical standards of the registered experts.

To ensure these standards and the European list of experts, harmonisation of Member States' legislation will be needed. Only through the unification of national legislation regarding expert activities will it be possible for the courts in the Member States to have the guarantee that the impartiality, independence and quality of experts' opinions will be maintained in selecting and appointing experts from other Member States.

In other words, the way forward for the emergence of the Euro-expert will involve unifying the European standards for performance of expert activities and defining the appropriate national authorities for the proper management of expert lists meeting those standards.

It should be noted that the mere availability of the lists of experts in one virtual space would represent progress in terms of a welcome shift towards awareness on the part of the courts of the available experts from the necessary field of study who may be invited to submit an expert's opinion according to the national rules (or in accordance with the ad hoc procedure).

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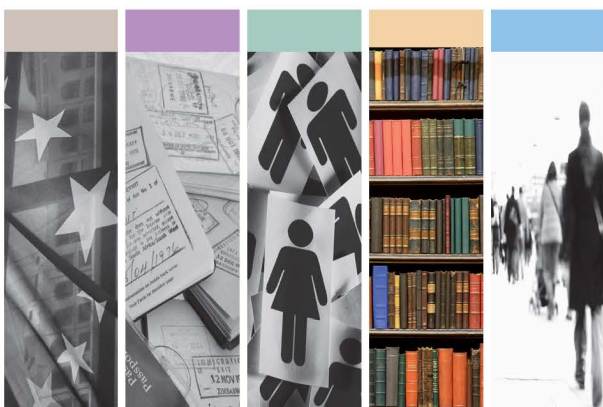
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