

CIVIL LEGAL EXPERT EXAMINATION IN BELGIUM



(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)

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Writers : Étienne Claes & Alain Hendericks

Expert, EEEI treasurer

Lawyer

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Questions	Answers	Observations
o. Separate administrative order	Yes	
1. Procedures for launching an expertise		<p>The burden of proof rests on the party seeking enforcement of a claim or on the one that wishes to be released of it.</p> <p>The judge's power to order an expert report is discretionary, except when the law imposes the requirement to use of an expert, or at the request of a litigant or adjoined party (when the judge would need to approve the appointment).</p> <p>The judge may instruct experts to make fact findings or to give advice on the technical nature leading to the solution of a dispute brought before him/her, or order an expert report as a precautionary measure. In case of objective and factual threat of litigation it may be necessary to appoint an expert in order to preserve evidence or facts on which the solution of this dispute might depend.</p> <p>The judge will consider if the expert report is strictly necessary.</p>
1.1. Initiative :	Judge or party (ies)	
1.2. Compulsory expertises	Law	
1.3. Decision	Judge	
1.4. « In futurum » expertise possible ?		
2. Appointing an expert (or experts)		<p>A legal register of experts is foreseen by the Belgian judicial code. However, the register is not yet operational. Experts are designated according to their experience, competence and reputation in a specific field of expertise. The expert may be an employee, an independent worker, a civil servant or a public institution.</p> <p>Litigants and/or adjoined parties in the litigation are entitled to give their opinion on the appointment and choice of an expert. If the litigants and/or adjoined party agree, then, usually, the Judge will confirm the designation.</p> <p>When the Judge agree the Litigants' and/or adjoined parties' choice of an expert, his/her decision ought to be explained.</p> <p>A judicial expert may be dismissed from the position of expert for the same reasons as for the dismissal of judges, which includes lack of impartiality and the existence of a conflict of interest.</p> <p>When the expert has been chosen by the Litigants and/or adjoined parties, his/her dismissal may only arise from reasons arising after his/her appointment.</p> <p>The expert who knows a cause why he/she might be dismissed is required to notify the parties and to withdraw, unless litigants and/or adjoined parties agree to keep him/her in position.</p> <p>The judge may also appoint a panel of experts, when he/she deems appropriate. The expert may be assisted by technical advisers.</p> <p>The judge must signal the need for the expert to be assisted in his/her decision when ordering the expertise.</p>
2.1. List In case of a list : Identification, address, Internet address (URL)	No list	
2.2 Oath	At each mission	
2.3. Choice of the expert	Judge	
2.4. Parties associated to the appointment ?	Yes	
2.5. Nationality	E.U.	
2.6. Objection by the parties	Yes	
2.7. Possibility to refuse to the mission	Yes	
2.8. Possibility to add an other expert	By the judge	
2.9. Possibility for the expert to use an assistant	Yes	
3. Expert's mission definition		<p>Various kinds of assignments (expertise, fact finding, consulting etc.)</p>
3.1. Who defines the mission ?	Judge	
3.2. Type of missions	All	
4. Expert's mission progress		<p>All disputes relating to expertise that occur during it, between the parties or between the parties and experts, including experts replacement demand and any claim relating to the extension or the extension of the mission, are settled by the judge.</p> <p>If the judge does not find in the report sufficient clarification, he/she may order or the realization of additional expertise by the same expert or the realization of a new mission by another expert.</p>
4.1. Supervision by a judge	Yes	
4.2. Presence of both parties	immediate et permanent	

Questions	Answers	Observations
4.3. Attendance to the hearing	On request	In civil cases, the parties are required to cooperate in the expertise. Otherwise, the judge may draw any conclusion he/she deems appropriate. The expertise cannot be used as a proof against a party that has been forced to intervene after the expert has already rendered his/her provisional conclusions, unless the latter party does not deny the use of this report as a way of proof.
5. Closing an expertise :		
5.1. Does a conciliation end an expertise ?	Yes	Expert mission ends in principle by the filing of his/her final report. The final report is dated and reports the presence of the parties during the proceedings, their verbal statements and submissions. It also contains the table of documents and notes submitted by the parties to the experts; he/she can reproduce the documents to the extent necessary for the discussion. The expert may be asked to clarify his report at the hearing, both in civil and criminal matters. The judge is not bound by the findings of the expert, even if these conclusions are usually followed. Expertise is a way of proof which is taken into account at the discretion of the judge.
5.2. Compulsory form for the report	Written	
5.3. Does the report end the expert's mission ?	Yes	
5.4. Is there a compulsory structure for the report ?	Yes	
5.5. Is a pre-report compulsory ?	Yes	
5.6. Do the expert's conclusions tie the judge ?	No	
5.7. Possibility for a second opinion	Yes	
6. Paying for the expertise :		
6.1. Provision - deposit	The Parties	The Judge determines the payment of a provisional payment, the time and the which litigants and/or adjoined parties should pay. If the expert believes that the initial provisional payment is not enough, he/she may ask the judge to require an additional provision or authorize to release a larger part of it. If the expert does not submit its state of fees and expenses or if the parties do not agree on the amount of fees and costs requested by the experts, the judge decides upon the amount of fees and expenses payable.
6.2. Deposit determination	Judge	
6.3. Possibility for a complementary deposit	Yes	
6.4. Determination of remuneration and charges	Expert	
6.5. Challenging possible ?	Yes	
7. Expert's liability		The expert is civilly liable in connection with the fulfillment of her/his mission. The criminal liability of the expert may be taken pursuant to offenses specifically applicable to experts including contempt of court such as cases of falsification of his written reports or the oral presentations or acceptance of direct payment by one party to the case, knowing it is not allowed.
7.1. Are there documents governing the expertise ?	Yes	
7.2. Expert's liability	Civil and penal	
7.3. Obligation for the expert to have an insurance	No	
8. Statutes of the expert		Are registered in the national register of judicial experts, individuals who : <ul style="list-style-type: none"> • 1) justifying relevant experience of at least five years during the eight years preceding the application for registration in the field of expertise and specialization in which they register as a judicial expert ; • 2) are nationals of a member state of the European Union or legal residents ; • 3) do not have a criminal record under section 595 of the Code of Criminal Procedure, issued by the municipal administration of their domicile or residence and not older than three months; experts who do not have a domicile or residence in Belgium can present a similar document from the Member State of the European Union where they have their domicile or residence ; • 4) have not been convicted, even suspended, for any misdemeanor or felony ; • 5) declare in writing to the Minister of Justice that they keep themselves at the disposal of the judicial authorities, who can use their services ; • 6) provide proof that they have the professional competence and legal knowledge required ; • 7) declare in writing to the Minister of Justice that they adhere to the code of ethics established by the Minister of Justice, and specifically the principles of independence and impartiality ; • 8) have taken the oath "I swear that I will perform my mission in honor and conscience, with accuracy and honesty".
8.1. Selection criterias (accreditation)	No	
8.2. Competencies classification	Other referentials	
8.3. Required qualifications	No	
8.4. Accreditation	No accreditation	
8.5. Possibility to accredit a legal entity	No	
8.6. Accreditation duration	No accreditation	
8.7. Ability periodic monitoring	No	
8.8. Activity monitoring	No	
8.9. Activity reporting by the expert	No	
8.10. Ethics rules	Yes	
8.11. « Best practices »	Yes	
8.12. Possibility for sanctions	Yes	
8.13. Texts governing the expert's statutes	No	

References

H. BOULARBAH (ed.), Le nouveau droit de l'expertise judiciaire en pratique. Commentaires de la loi du 15 mai 2007 modifiant le Code judiciaire en ce qui concerne l'expertise et rétablissant un article 509quater dans le Code pénal, Reeks Unité de droit judiciaire de l'ULB, Brussel, Larcier, 2007, 183 p. ; CASTERMANS, De hervorming van het deskundigenonderzoek, Gent, Story Publishers, 2007, 95 p.