

CIVIL LEGAL EXPERT EXAMINATION IN LITHUANIA



(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)

Source : European expertise & expert institute

Tous droits de reproduction réservés / Copyright reserved

Updated by : Miglė Žukauskaitė (Vilnius University – Lithuania)

Reviewers : Allen Hirson (Lecturer in Phonetics, University of London)
& Maud Lepez (Associate solicitor of England and Wales, French Avocat)

KEYWORDS : LEGAL EXPERT EXAMINATION / LITHUANIA - REF. : JJ, C, O5, O1

Questions	Answers	Observations
o. Other administrative order	Yes	
1. Procedural rules regarding the decision to require an expertise.		
1.1. On the initiative of :	The judge or the parties	Court proceedings normally stayed in order to appoint an expert. The judge appoints the expert. He is not bound by the instructions requested by the parties but must justify his decision to refuse the appointment.
1.2. Existence of compulsory expertise	Unspecified	There are situations where expert evidence is mandatory e.g. in order to determine a party's legal capacity
1.3. Decision-maker	The judge appoints the expert.	Parties can appoint their own expert and submit expert's report in support of their case. However the cost of doing so is not normally met by the court / recoverable as part of the case's legal costs.
1.4. Is a pre-trial expertise possible ?	Unspecified	
2. Appointing an expert (or experts)		
2.1. List In case of a list : Identification, address, Internet address (URL)	Yes http://www.tm.lt/veikla/kryptis/36/	There is a national list pursuant to Article 4 of Law on Forensic Examination LFE. If no expert of the required specialism is on the list, the appointment may be made outside the list. There are several experts institutes whose specialisms are defined: Centre of forensic science of Lithuania.
2.2 Oath	Unspecified	An expert can be recused if he/she cannot be considered independent from the parties due to an employer-employee relationship or if an expert has previously conducted an audit, which forms the grounds of the on-going proceedings. However, an expert cannot be recused on the basis that he/she has served as an expert in the same case in the proceedings in a court of lower instance.
2.3. Choice of the expert	Judge taking into account the opinion of the parties	
2.4. Parties associated to the appointment ?	In certain cases	
2.5. Nationality	National Lithuanian preferred as the expert needs to be certified.	A person who is an expert in a member state of the EU or other country with which Lithuania has signed a treaty on legal aid can be appointed.
2.6. Recusal by the parties	Yes	An expert can be recused by the parties if he is biased, has an interest in the result of the case, and generally on the same grounds as a judge. Shall withdraw him/herself if his/her impartiality is in doubt ; if the case is outside his/her specialism ; or if he/she finds the instructions incomplete. In all of the above, the expert shall explain reason for withdrawal.
2.7. Expert's withdrawal (Refusal of a mission)	Yes	
2.8. Possibility of adding another expert	Yes	
2.9. Possibility of being assisted by an employee	Unspecified	If needed, several experts of a board of experts can be appointed in a case. If all of them reach the same conclusions, a harmonised report should be prepared. Otherwise, separate reports should be submitted.
3. Expert's mission definition		
3.1. Who determines the mission ?	The Judge should take into account the questions raised by the parties	The parties can ask the judge to appoint an expert and suggest questions they wish to be submitted to the expert. The court shall define the instructions but must justify not taking into account the questions suggested by the parties. The judge can add additional questions or order a separate instruction.
3.2. Type of missions	Unspecified	
4. Expert's mission progress		
4.1. Supervision by a judge	Yes, but indirectly.	If further clarification of the expert's report is needed, the expert can attend the hearing. Judge and the parties are free to ask questions on the expert's report, and/or his/her methodology.
4.2. Form of contradictory proceedings	Yes	The judge defines the instruction ; he/she gives to the expert the documents, pieces of evidence etc. ; he/she can ask additional questions or order a separate instruction.
4.3. Participation in the hearing	Yes	The expert can be ordered to attend the hearing to complete or clarify his/her report and answer questions from the parties' and/or the judge if clarification is required.
5. Closing an expertise :		
5.1. Does conciliation end the expert's mission ?	Unspecified	Even though the judge is not bound by the expert's conclusions, he/she should provide the reasoning behind any decision to disregard the findings of the expert's report. The expert can be ordered to attend the hearing to complete or clarify his report and answer questions from the parties and/or the judge.
5.2. Compulsory form for the report	Written	The report should consist of an introduction, research and conclusions. Art. 24 of the Law on Forensic Expertise provide a detailed list of what should be included in the abovementioned parts.
5.3. Does the report end the expert's mission ?	No	

Questions	Answers	Observations	
5.4. Is there a compulsory structure for the report ?	The report must contain answers to all questions contained in the instruction.	The expert can provide additional information he/she considers important, even if it does not directly address the questions addressed in the instructions.	
5.5. Is a preliminary report compulsory ?	Unspecified	The report must contain answers to all questions contained in the instruction, how these were arrived at, the methodologies employed, and the means by which conclusions were drawn.	
5.6. Do the expert's conclusions tie the judge ?	No	The Judge must justify if he/she does not follow the expert's conclusions in his/her judgment.	
5.7. Possibility of a second opinion	Unspecified		
6. Funding for the expertise :		An advance on the expert's fees may be ordered by the judge and paid by the instructing party. If both parties request expert evidence, each must pay half of the expert's reasonable fees. If the decision to appoint an expert is that of the the court, the fee should be paid by the Ministry of Justice.	
6.1. Security-Payment	Yes		
6.2. Determining the amount of financial provision.	By the judge		If it's a forensic institution, according to a threshold, determined in advance by that institution; If it's a private expert, the agreement on fees should be reached between the court and the expert before the provision of services.
6.3. Possibility of additional payment	Unspecified		
6.4. Determining fees and costs	To be considered on a case-by-case basis.		Experts should be paid only after they have carried out their work and submitted their report. The fee shall reflect the expert's work and expenses incurred in performing such work. The unsuccessful party bears the burden of legal costs, including the expert fees. Different rules apply in the Civil Code in cases of the obligatory sale of shares and in investigations of company's affairs.
6.5. Possibility of contesting the fees	Yes		
7. Expert's liability within proceedings		The main rules that the expert shall comply with are (Art 12. Of LFE) : only accept instruction on his/her field of expertise/specialism ; confidentiality, state secret, professional/business confidentiality ; loyalty, honesty, objectivity, impartiality.	
7.1. Are there any rules regulating expertise ?	Yes Art 12. of Law on Forensic Examination (LFE)		Experts might face penalties (warning, removal from the courtroom, fine or arrest) in case of misconduct during a hearing in court.
7.2. Expert liability	Yes. These may be criminal, administrative, professional.		An expert may face professional sanctions if his/her performance does not comply with the Code of Conduct. Such sanctions may include a formal warning, public warning or removal from the list. A fine of up to 300 euros may be imposed for misconduct during a hearing, being absent from hearing without a justified reason, etc. An expert may face criminal sanctions for submitting false conclusions in his/her report.
7.3. Mandatory insurance for the expert	Unspecified		
8. The expert's status		A person willing to become a court expert has to pass an examination on relevant legal issues. He/she should as well have a university degree in his/her area of expertise. Exceptions apply.	
8.1. Selection criteria (accreditation)	Yes		
8.2. Classification of skills	Unspecified		
8.3. Required qualifications	Examinations ; university degree		The experts are certified by a Commission. Then they can apply to be on the list of the Ministry of Justice within a year.
8.4. Delivery of accreditation	Comittees		The Government and ministries can establish public bodies, which would be designated to act as forensic experts. These public bodies are considered as forensic institutions.
8.5. Accrediting a legal person	Unspecified		
8.6. Validity period for the accreditation	5 years		
8.7. Regular assessment tests	To be considered on a case-by-case basis.		Committee formed in forensic institution grants an accreditation in specific area of expertise. Accreditation can be withdrawn by the Ministry or the institution in accordance with para 15 of administrative decree of 14 th of July, 2008 and articles 5 and 6 of LFE.
8.8. Supervision of the expert's	Unspecified		The accreditation is not renewed if the committee is aware that the quality of expert's reports does not meet the necessary standards.
8.9. Expert's activity report	Unspecified		
8.10. Code of ethics	Unspecified		Sanctions are withdrawal of accreditation – Decree no. 1R-243 of the Ministry of justice (13/06/2008) created a "Council of coordination of activities of court appointed experts".
8.11. Good practices	Unspecified		A Council for the Coordination of the Court Experts is responsible for the supervision of experts and forensic institutions.
8.12. Possibility of penalties	Yes		Laws governing the expert's status : Code of Civil Procedure, Law on Forensic Expertise, Ordinances of the Minister of Justice, etc.
8.13. Laws governing the expert's status	Yes		

Bibliography

Code of Civil Procedure, Law on Forensic Expertise, Civil Code, Criminal Code, Ordinances of the Minister of Justice No 334 of the 6th of December, 2002 ; No 111 of the 18th of April, 2003 ; No 180 of the 16th of June, 2003 ; No 1R-34 of the 11th of February, 2014 (all as amended and supplemented).