

CIVIL LEGAL EXPERT EXAMINATION IN POLAND



(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)

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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 Court appoints an expert at the request of one of the parties or on its own motion	The expert opinion is a kind of evidence, which cannot be replaced with a different type of evidence, such as a witness testimony. The court takes the evidence from the expert opinion, if the do-called special information is needed for the resolution of the case. The expert opinion is mandatory in proceedings for incapacitation. The person for whom the application for incapacitation is requested must be examined by an expert psychiatrist or neurologist, as well as a psychologist. Also, in the enforcement proceedings a mandatory expert opinion is required, e.g. to estimate seized objects of historical or artistic value or objects made of gold and platinum. As a matter of principle, the decision-maker is the judge. It is also possible to appoint an expert by the bailiff for the purposes of enforcement proceedings. In cases requiring the expert opinion, the bailiff will ask for one or several permanent court experts. If there is no expert in the field, the bailiff will ask the court to appoint an expert and take the pledge.
1.2. Existence of compulsory expertise	For example in cases dealing with disabled persons, in the division of a joint agricultural property ; etc.	
1.3. Decision-maker	The judge	
1.4. Is a pre-trial expertise possible ?	No	
2. Appointing an expert (or experts) 2.1. List In case of a list : Identification, address, Internet address (URL)	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. Court experts are established for specific branches of science, technology, crafts, and other skills. There is no centralized register of court experts. Individual lists of court experts are run by the president of the district court, which appointed the expert. The lists of court experts are available in the court office to those who are interested. In particular, these lists are made available to parties, participants in the proceedings and bodies conducting preparatory proceedings in criminal cases and to military courts. The conditions for the removal of an expert from the list and the removal of his or her expert records are the moment when the expert is dismissed from the position, the death of the expert, and the expiry of the period of establishment of the expert, unless reinstated. The oath is not renewed every time the Court is seized. 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. 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. It is also possible to appoint an expert by the bailiff for the purposes of enforcement proceedings. A report by a party-appointed expert is but one element among others that can be produced in support of the party's thesis. 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. 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. 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.
2.2 Oath	An expert that is thus registered is sworn in once.	
2.3. Choice of the expert	The judge	
2.4. Parties associated to the appointment ?	Yes	
2.5. Nationality	Irrelevant	
2.6. Recusal by the parties	On the same grounds as a judge, and more generally when there are duly proven facts that may lead to doubts on his impartiality.	
2.7. Expert's withdrawal (Refusal of a mission)	Possible	
2.8. Possibility of adding another expert	Yes	
2.9. Possibility of being assisted by an employee	No provision for this particular procedure	
3. Expert's mission definition 3.1. Who determines the mission ?	The judge	The mission is set out by the judge (or bailiff in enforcement proceedings) and the expert must conform to it. The judge can modify the terms of the on-going mission and extend the deadline.
3.2. Type of missions	The judge can modify the terms of the on-going mission.	
4. Expert's mission progress 4.1. Supervision by a judge	Yes	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. Form of contradictory proceedings : "Deferred" contradictory procedure, ex-post, by the expert's presence at the hearing in order to enable the parties to question him. The expert is summoned to the court hearing to be questioned by the parties.
4.2. Form of contradictory proceedings	Depends on the type of mission	
4.3. Participation in the hearing	Yes	
5. Closing an expertise : 5.1. Does conciliation end the expert's mission ?	Yes	Conciliation puts an end to the civil suit and renders the expert's mission null. The report must support the expert's findings.

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5.2. Compulsory form for the report	The judge decides whether this report is to be written or verbal.	The expert must present himself to the hearing to be questioned by the parties. Apart from the scope of code regulations, there is also a question of the layout and language of the expert opinion. The legislator only points out the optional nature of the justification of the opinion, as reflected in Art. 285 § 1 of the CPC.
5.3. Does the report end the expert's mission ?	No	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. The substantive audit of the expert opinion is related to the need to determine whether the content of the opinion raises any doubts, i.e. whether it is full and there is no need to supplement it. The substantive audit of the court is also connected with its power to freely evaluate the evidence, at the stage of verifying the correctness of the logical statement made by the court expert, the court has the opportunity to become familiar with the formulated conclusions. The judge can ask for a second opinion- namely by appointing another expert to this end.
5.4. Is there a compulsory structure for the report ?	No	
5.5. Is a preliminary report compulsory ?	No	
5.6. Do the expert's conclusions tie the judge ?	No	
5.7. Possibility of a second opinion	Yes	
6. Funding for the expertise :		
6.1. Security-Payment	The litigant	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).
6.2. Determining the amount of financial provision.	By the judge	As a general rule, the unsuccessful party bears the burden of legal costs, including the expert's fees. The amount of remuneration for the performed work of the expert is determined by taking into account the required qualifications, the time and work required for the opinion, and the amount of the expenditure – on the basis of the invoice presented by the expert. Essential for the proper assessment of the expert's request for remuneration and for determining the appropriate amount of remuneration for his or her opinion is an accurate analysis of the amount of work done by the expert and the time actually needed to complete the order of the judicial body, taking into account the complexity of the object of the opinion and its scope. The amount of the expert's remuneration is calculated at the hourly rate of pay or at the flat rate determined for each category of experts taking into consideration the field in which they are specialists.
6.3. Possibility of additional payment	Yes	If the opinion is false, the remuneration and reimbursement of any costs incurred by an expert in connection with the preparation or submission of the opinion is not possible. If the opinion is unreliable or has been made or submitted with unjustified delay, the remuneration is appropriately reduced. At the same time, the legislator provided a possibility of waiving the remuneration or reimbursement of any costs incurred by an expert in connection with the preparation or submission of the opinion.
6.4. Determining fees and costs	The Court determines the payment based on rates set out by law.	
6.5. Possibility of contesting the fees	Yes	
7. Expert's liability within proceedings		
7.1. Are there any rules regulating expertise ?	Yes	Laws governing expert examinations : Code of Civil Procedure ; Law of 27 th July 2001 on judicial organisation (Art.157) ; Ministry of Justice Decree of 23 rd February 2007, on the rules governing ordinary jurisdictions ; Ministry of Justice Decree of 9 th March 1968, on the fees for bailiffs (Art. 46-48) ; etc.
7.2. Expert liability	Civil and criminal	There is no representative institutional structure for legal experts as such, but there are private bodies. 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.
7.3. Mandatory insurance for the expert	No	
8. The expert's status		
8.1. Selection criteria (accreditation)	Yes	
8.2. Classification of skills	Unspecified	
8.3. Required qualifications	Accreditation	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.
8.4. Delivery of accreditation	Justice	
8.5. Accrediting a legal person	Yes	There are not regular assessment tests, but when applying for a renewal of accreditation, the expert must prove that he has improved/maintained his technical competence.
8.6. Validity period for the accreditation	5 years	
8.7. Regular assessment tests	No	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.
8.8. Supervision of the expert's	No	
8.9. Expert's activity report	No	
8.10. Code of ethics	Yes	Laws governing the expert's status : Code of Civil Procedure (Art. 278 & following) + Law of 27 th July 2001 on judicial organisation (Art. 157).
8.11. Good practices	No	
8.12. Possibility of penalties	Unspecified	
8.13. Laws governing the expert's status	Yes	

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