

CIVIL LEGAL EXPERT EXAMINATION IN PORTUGAL



(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)

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Questions	Answers	Observations
o. Other administrative order	Unspecified	
1. Procedural rules regarding the decision to require an expertise.	A party or the judge	The expertise, for civil procedure, is decided on the initiative of a party or of a judge.
1.1. On the initiative of :		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 alleged by both parties. The judge defines the subject of expertise.
1.2. Existence of compulsory expertise	Yes (for example, for the expropriation procedure for public utility)	The Portuguese Civil Procedure admits the realization of expertise in futurum, even before the action in court, if there is a real possibility that some facts become impossible or very difficult to verify.
1.3. Decision-maker	The judge	
1.4. Is a pre-trial expertise possible ?	Yes	
2. Appointing an expert (or experts)	Yes : http://www.dgaj.mj.pt/sections/files/tribunais6107/peritos-avaliadores/	The judge gives priority to appointing an establishment, a laboratory, or a public service, if not possible he appoints an expert among people reputed competent in the applicable field. If it is necessary to ask experts in various specialisations, the judge appoints the experts. Magistrates and diplomats cannot be appointed as experts.
2.1. List In case of a list : Identification, address, Internet address (URL)		
2.2 Oath	For each mission	The Portuguese Ministry of Justice periodically prepares a list of expert evaluators of real estate, updated and published on the website of the Directorate General of Administration of Justice. These experts are asked to intervene in principle in the disputed expropriation procedures, at the time of the arbitration and also in other proceedings if the expertise to realize asks the application of the same knowledge.
2.3. Choice of the expert	By the parties or, failing by Judge	The list of evaluators, is available online.
2.4. Parties associated to the appointment ?	Yes. Code of Civil Procedure	The appointed expert must commit to properly perform their mission unless they are public officials and intervene in the exercise of their functions.
2.5. Nationality	Indifferent	The parties are heard before the appointment of the expert. If they agree on the identity of the expert to suggest, the judge shall appoint, unless there are reasons which question his professional conduct or competence.
2.6. Recusal by the parties	Yes	The recusal rules for experts are that applicable to judges, mutatis mutandis. The causes of incapacity, suspicions and regulatory exemption of the expert may be invoked by the parties and by the designated expert.
2.7. Expert's withdrawal (Refusal of a mission)	Yes (for personal reasons)	
2.8. Possibility of adding another expert	Yes	
2.9. Possibility of being assisted by an employee	Yes	
3. Expert's mission definition	The judge, after consulting both parties	It is up to the judge, after consulting both parties, to determine the purpose of the mission, in the form of very specific questions, to which the expert must answer. The parties may propose its extension to other subjects. The applicant must indicate the subject, asking the questions he wishes to clarify with the expertise. The other party is always heard.
3.1. Who determines the mission ?		
3.2. Type of missions	The injury analysis in order to determine possible physical disability and compensation ; etc.	
4. Expert's mission progress	Yes	The expert is required to carry out its mission efficiently. It may request all necessary means to carry out its mission and ask any element of the procedure.
4.1. Supervision by a judge		The judge controls the realization of expertise. In his expert appointment decision, the judge will set a date for the beginning of the mission; the judge may attend the launch meeting.
4.2. Form of contradictory proceedings	The parties must reply to the expert's questions and can make all the observations they deem useful.	If operations are not completed within the deadline set for delivery of the expert report, the judge fixed an additional period not to exceed 30 days. 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.
4.3. Participation in the hearing	The parties or the judge can ask the expert to participate in a hearing.	If the judge is present the parties may also make motions concerning the subject matter of the due diligence.

Questions	Answers	Observations
5. Closing an expertise :		
5.1. Does conciliation end the expert's mission ?	No	The result of the expertise is realized by the point of view which gives the Expert in his 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.
5.2. Compulsory form for the report	No	The parties may complain of a deficiency, a contradiction, a lack of clarity in the expert report or the findings are not duly justified. If the judge agrees, he asks the expert to clarify, supplement or justify in writing the answers of the report.
5.3. Does the report end the expert's mission ?	No	The expertise in civil procedure is freely analysed by the judge, who must, however, justify his conviction.
5.4. Is there a compulsory structure for the report ?	No	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.
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. Paying for the expertise :		
6.1. Security-Payment	No	The remuneration of experts is charged to of the parties. The remuneration of experts is set by the judge, as the table iv art. 17th, No. 2, of the Regulations on court fees (1-10 Units of Account - per service), including 1 UC correspond to € 102.00.
6.2. Determining the amount of financial provision.	No	Regarding the forensic examinations and expertise, requested the services of the Forensic Institute or third parties appointed by it, the amounts paid to the Institute and fixed on the table approved by Ministry Decree Justice (Law No. 45/2004 of 19 August).
6.3. Possibility of additional payment	Unspecified	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.
6.4. Determining fees and costs	The judge within the limits provided for by law	The Constitutional Court has decided twice on the unconstitutionality of the interpretation of the regulation on court costs which sets the absolute limitation of the appraisal fees to 10 UCs, not allowing the higher assessment of the expert's fees.
6.5. Possibility of contesting the fees	Yes, in the case of determination by the judge.	
7. Expert's liability		
7.1. Are there any rules regulating expertise ?	The Civil Code, the Code of Civil Procedure and the Regulation on legal costs.	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.
7.2. Expert liability	An expert can be fined. The judge can recuse him.	Insurance for the expert depends on the Order or Professional Association to which he belongs.
7.3. Mandatory insurance for the expert	The Order or Professional Association of the expert	
8. Statutes of the expert		
8.1. Selection criteria (accreditation)	No, except in cases concerning expert appraisers and official appraisers.	
8.2. Classification of skills	Defined by the institution where the expert is affiliated	Experts are professionals with technical knowledge with a Master's degree and a specific training and are registered in orders or professional associations.
8.3. Required qualifications	Unspecified	Specifically, for example, expert evaluators who are part of the official lists have a Masters (in architecture, engineering, economy, ...) or have a license, according to Decree No. 788/2004 of 9 July, are recruited through an open competition for training provided by the School of legal studies, according to Decree-Law No. 125/2002, of 10 May, amended by DL n° 94/2009 of 27 April and Decree No 240/2008 of 17 March, as amended by Decree No. 449/2009 of 29 April.
8.4. Delivery of accreditation	Unspecified	
8.5. Possibility of accrediting a legal person	Yes	
8.6. Validity period for the accreditation	Unspecified	
8.7. Regular assessment tests	No	
8.8. Supervision of the expert's	No	
8.9. Expert's activity report	No	
8.10. Code of ethics	Defined by the institution where the expert is affiliated	According to general law, experts may be liable to civil or criminal level. In the case of violation of their duties, according to occupational status, experts may be liable to disciplinary level.
8.11. Good practices	Defined by the institution where the expert is affiliated	
8.12. Possibility of penalties	Yes	
8.13. Laws governing the expert's status	Yes	