

# The role of the office technical consultant in Italian civil procedure: critical aspects and evolutionary perspectives

*The function of the OTC ( official technical consultant) and its identikit also in light of the recent Cartabia Reform*

# The function of the OTC

The OTC plays the role of auxiliary to the judge whenever the latter is called upon to deal with a matter for which particular technical knowledge is required.

The appointment of the OTC is a discretionary choice of the judge, who usually chooses him from among those registered in the appropriate registers

# The function of technical consultancy

- In general, the OTC's activity cannot be considered a means of proof in the strict sense as it only has the purpose of providing the judge with a technical evaluation of the elements acquired, providing a possible solution to issues that require specific knowledge.
- The technical consultant has the function of providing the judge's evaluation activity with the contribution of those technical knowledge that he does not possess, while his intervention cannot exempt the parties from proving the facts deduced by them and placed at the basis of their respective requests

Follows:

- The consultancy can exceptionally take on the nature of an objective source of evidence when it becomes an instrument, in addition to technical evaluation, also for ascertaining factual situations detectable through the use of particular technical knowledge (however, the possibility that the expert witness may be called upon to ascertain facts that can generally form the subject of testimonial evidence)

# Follows:

- More precisely, technical consultancy can be of two types:
- - deductive
- - perceiving
- The first occurs when the judge entrusts the consultant with the simple task of evaluating already established facts or pre-existing data: in this case his activity cannot produce evidence.
- In the second case, however, the expert witness is given the task of ascertaining facts that cannot otherwise be ascertained except with the use of particular techniques or knowledge: only in the latter case does the consultancy become a direct source of proof.

# WHO IS THE OTC?

- He is a professional with particular technical expertise who the judge appoints to assist him with individual documents or for the entire trial (art. 61 1st paragraph cpc).
- He is normally registered in a special Register (OTC Register) formed according to the implementation provisions of the CPC (art. 61 2nd Paragraph CPC) [ *The choice of technical consultants must normally be made by the judge from among the people registered in the Register established at the Court* ].
- He is an auxiliary to the judge and his task is to give a purely technical evaluation of the facts of the case according to the questions posed to him by the judge [ *The technical consultant carries out the role of auxiliary to the judge whenever the latter is called to deal with a matter for the which particular technical knowledge is required* ].
- He is an impartial subject and, like the judge, has an obligation to abstain in all the cases provided for by the art. 51 cpc; has the obligation to provide his office if registered in the OTC Register (art. 63 cpc).

# The OTC and the OTC Register

The choice of the OTC must normally be made from among the people registered in the OTC Register established at the Court (art. 61 paragraph 2 of the CPC and art. 13 of the CPC provisions).

All judges who have their seat in the jurisdiction of the Court must normally entrust the functions of technical consultant to those registered in the Register of the Court itself.

The judges at the specialized sections of the Courts with district jurisdiction can assign the task to consultants registered in the Registers of the District Courts (art. 22 paragraph 1 disp.att. cpc).

None of the registered consultants can be assigned tasks exceeding 10% of those entrusted by the respective office.

# The Cartabian Reform

- The reform of civil procedure (so-called Cartabia Reform - Legislative Decree 10 October 2022 n. 149) and the subsequent Decree of the Ministry of Justice 4 August 2023, n. 109, have greatly innovated the structure and discipline of the OTC Register and consequently the requirements that professionals must have in order to register and remain registered in the OTC Register

# previous

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The Register had only a local dimension and was therefore established in each Court;



The Register was kept in analogue mode by the President of the Court and was formed in analogue mode by the Committee chaired by him;



The Register was divided into categories not specified by the law, which limited itself to requiring that the following categories be always included: medical-surgical, industrial, commercial, agricultural, banking, insurance and those of child neuropsychiatry, developmental psychology and legal or forensic psychology;



special technical expertise in a specific subject could obtain registration in the Register : the law did not further specify the concept.

# Current discipline

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A Register of Expert Witnesses is established at each Court - art. 13 disp.att.cpc- (therefore registration and permanence in the Register continue to be managed at local level by the Committee) but the data from the local Registers flow into a national list of expert witnesses established at the Ministry of Justice, divided by categories and containing the indication of the sectors of specialization of each category;



The register and the national list (accessible to the public through the telematic services portal) are kept electronically;



With Ministerial Decree 109/2023, the categories of the Register and the sectors of specialization of each category were analytically established;



Those who meet the requirements specifically determined by Ministerial Decree 109/2023 can obtain registration in the Register.

# Follows:

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In particular:



**87** categories and **972** specializations compared to a number of previous categories substantially coinciding with the various professions (no more than 20 categories);



Some categories envisaged by the new legislation coincide with the specializations of professions previously considered categories (see for example the medical field);



The general requirement of special competence in a subject foreseen by the previous legislation is indicated by mandatory requirements in the art. 4 Ministerial Decree 109/2023

# Art.4 DM 109/2023

- **Art. 4 Requirements for registration in the register of technical consultants 1** . Pursuant to article 15 of the implementing provisions, those who: a) are registered in the respective professional orders or colleges, or roles, or professional associations, may be included in the register; b) are in compliance with their continuing professional training obligations, where applicable; c) are of appropriate moral conduct; d) have special technical expertise in the subjects covered by the category of interest; e) have registered residence or professional domicile pursuant to article 16 of law 21 December 1999, n. 526 in the court district.
- 2. For the purposes of paragraph 1, letter a), the professional must be registered in the respective professional association or college. For professions not organized into orders or colleges, the professional must **be** registered in the register of experts and experts held by the chamber of commerce, industry, crafts and agriculture or in one of the professional associations included in the list referred to in article 2, paragraph 7, of law 14 January 2013, n. 4, which issue the certificate of quality and professional qualification of the services provided by the members.
- 3. The continuing professional training obligations referred to in paragraph 1, letter b), are those provided for by the respective professional systems or, for professions not organized into orders or colleges, by the association referred to in article 2 of law no. 4 of 2013 to which the aspirant is registered.
- 4. The requirement of special technical competence envisaged by paragraph 1, letter d) exists when, with specific reference to the category and any sector of specialisation, the professional activity has been carried out effectively and continuously for at least five years.
- 5. In the absence of the requirement referred to in paragraph 4, special technical competence is recognized when at least two of the following circumstances apply: a) possession of adequate post-university specialization or in-depth qualifications, provided that the candidate has been enrolled for at least five years in their respective orders, colleges or professional associations; b) possession of an adequate scientific curriculum, including, by way of example, teaching activities, research activities, membership in scientific societies, publications in scientific journals; c) achievement of the UNI certification relating to the professional activity carried out, issued by an accredited certification body.
- 6. For the medical-surgical category, for the purposes referred to in paragraph 4, the exercise of the profession after obtaining the qualification of specialization is relevant. For specialization in forensic medicine, the requirement referred to in paragraph 4 does not apply and possession of one of those provided for in paragraph 5, letters a) and b) is sufficient.
- 7. The candidate can be registered, within the same register, in multiple categories or sectors of specialization, when he meets the requirements for each of them.
- 8. For the purposes of registration in the required category and sector of specialization, the special technical competence is assessed by the committee.

# Positive aspects of the reform

The electronic register, which ensures transparency and simplification of the registration procedure;

The national electronic list, which will probably facilitate the achievement of the objectives of the European *Find an Expert II* project;

Having specified the content of the "special competence" to obtain registration in the Register, thus avoiding considering this requirement in a downwards manner by making it substantially coincide with the qualification (as happened previously in many courts) and standardizing the discipline on a national, avoiding unequal treatment;

Having established qualitative requirements for registration in the OTC Register, thus ensuring a higher quality of consultancy and therefore of the judge's decisions;

## Critical aspects of the reform

Having made the list of categories and specializations rigid, multiplying the entries and making it difficult to identify a correspondence between the previous categories and the current ones;

The multiplication of categories and specializations also makes it difficult to compare them with the cataloging carried out by other European countries and therefore makes it more complex to achieve the objectives of the *Find an Expert II Project*

The time constraints  
do not allow me to  
go into greater  
depth

THANKS FOR THE  
ATTENTION !

*Marilena Rizzo*