



Civil legal expert examination in Slovenia



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(Subject to legal or jurisprudential developments)

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Question : Other administrative order ? Answer : Yes

PROCEDURAL RULES IN CALLING FOR AN EXPERT EXAMINATION

Q. On the initiative of ? A. The judge.

Q. Mandatory expert examinations ?
A. Yes.

Q. Decision-maker ? A. The judge.

Q. Is a pre-trial expert examination possible ? A. Yes, when performance of that evidence would be endangered at a later stage of the proceedings.

Observations

The judge decides unilaterally if the expert examination is required (in cases wherein the judge has to determine or clarify certain disputed fact and expert knowledge is required).

In civil proceedings as a general rule (exceptions exist - such as child care/parental responsibility/contact right cases) the litigants must submit a proposal for taking evidence with an expert (depends on which party the burden of evidence lies).

CHOICE AND APPOINTMENT OF THE EXPERT(S)

Q. Register ?

A. List established and administered by the Ministry of Justice.

Q. Oath ? A. Yes.

Q. Choice of the expert ?

A. The judge.

Q. Participation by the parties in the appointment process ? A. Yes.

Q. Nationality ? A. Slovenian speakers from European Union or European Economic Area.

Q. Recusal by the litigant parties ?
A. Yes, for the same reasons as for judges.

Q. Expert's withdrawal (refusal of a mission) ?

A. Yes, but must be justified (same reasons as by the witnesses).

Q. Possibility of adding another expert ? A. Yes, for extremely complex missions.

Q. Possibility of being assisted by a colleague ? A. No.

Observations

Experts take an oath before the Minister of Justice, after the appointment procedure (condition: exam on special knowledge on specific field of expertise)

They may be refused for the same reasons as for judges: ties to the parties, previous expert examination in the same case before a lower court, or if other circumstances make his impartiality uncertain.

The move for recusal must be made when the judge hears the parties to decide on the expert's appointment or at the latest before the expert report has been submitted.

All the experts who participate in the mission must be appointed by the judge in order to allow for the parties to be able to recuse them.

DEFINITION OF THE EXPERT'S MISSION

Q. Who determines the mission ?

A. The judge.

Q. Type of mission ? A. All types.

Observations

The judge determines the object of the report and the questions to be answered, and if necessary he asks the expert complementary questions. A judge may ask parties for their questions, but at the end, the judge is the one that decides.

PROGRESS OF THE EXPERT'S MISSION

Q. Judge supervision ?

A. No.

Q. Form of contradictory procedure ?

A. Insofar as is possible, the judge transmits the expert's written findings before the hearing (Art. 253 CPC). The judge also transmits the preliminary report with a deadline before which the parties can make their own observations.

Q. Participation in the hearing ?

A. At the judge's request – general rule.

Observations

The expert can ask for clarifications on certain points or to be able to consult files pertaining to the case. He can also ask for necessary additional elements.

CLOSE OF THE EXPERT EXAMINATION

Q. Does conciliation put an end to the expert's mission ? A. Yes.

Q. Form imposed on the report ?

A. Written.



Q. Does the report put an end to the expert's mission ? A. Yes, and oral hearing.

Q. Is there an imposed structure for the report ? A. There are non-official standards

Q. Is a preliminary report mandatory ? A. Yes.

Q. Is the judge bound by the expert's conclusions ? A. No

Q. Possibility of a second opinion ? A. Yes

Observations

There are non-official standards prepared by legal expert associations in each field of specialisation.

The judge is not bound by the expert's conclusions – based on the principle of free assessment of evidence by the judge (Art. 8 CPC).

A second opinion is possible if the expert's findings are incomplete or if they contradict themselves on various points.

FUNDING FOR THE EXPERT EXAMINATION

Q. Security-Payment ? A. Yes.

Q. Determining the amount of payment due ? A. The judge.

Q. Possibility of additional payment ? A. Yes, but rarely.

Q. Determining fees and costs ? A. The fees are officially set in the « Rules on court experts, certified appraisers and court interpreters ».

Q. Possibility of contesting the fees ? A. Yes.

Observations

The party having requested the expert opinion pays, or the Court itself if it has decided that the expert opinion is necessary – for example in family law in the best interests of the child. The unsuccessful litigant reimburses the trial costs at the end of the procedure, including the expert examination.

Transport, accommodation and food expenses, as well as loss of earnings must

be reimbursed to the expert (e.g. Art. 249 CPC).

EXPERT LIABILITY WITHIN PROCEEDINGS

Q. Are there any laws governing expert examinations ? A. Yes

Q. Expert liability ? A. Yes.

Q. Mandatory insurance for the expert ? A. No.

Observations

Laws governing expert examinations : Court experts, certified appraisers and court interpreters Act ; Rules on court experts, certified appraisers and court interpreters.

The expert's civil liability can be incurred if the general conditions of professional liability are filled, that is to say, if breaching these professional standards has caused damage to a third party.

THE EXPERT'S STATUS

Q. Existence of selection criteria (accreditation) ? A. Yes.

Q. Classification of skills ? A. Yes, by the Ministry, on the recommendations of specialised bodies.

Q. Required qualifications ? A. Yes.

Q. Grant of accreditation ? A. By the Ministry of Justice.

Q. Possibility of accrediting a legal person ? A. Yes.

Q. Validity period for the accreditation ? A. Subject to compliance with the obligation of continuous training.

Q. Regular assessment tests ? A. Yes.

Q. Supervision of the expert's mission ? A. Yes.

Q. Expert's activity report ? A. No.

Q. Code of ethics ? A. Yes, general rules of the Code of Civil Procedure (article 251)

Q. Good practice ? A. Yes

Q. Possibility of penalties ? A. Yes

Q. Laws governing the expert's status ? A. Yes.

Observations

Selection criteria is defined in the Court experts, certified appraisers and court interpreters Act.

Provides for general criteria, a written test of knowledge and competence, and an oath taken before the Minister of Justice.

Accreditation is granted by the Ministry of Justice after consultation with a commission of experts in the same field whose members must be at least as qualified as the applicant (professional organisation / public body), and a written exam.

There is a possibility of accrediting a legal person, namely scientific bodies (hospitals, laboratories, universities...)

There are specialised public bodies in certain fields (counterfeit currency, graphology, fingerprinting...). In these cases, they are automatically appointed to do the work.

Tests may be made mandatory by the Ministry with an aim to ensure that experts in specific specialisations are up-to-date in the new methods or technologies developed in their respective fields (every 5 years).

The expert must respect the rules of the CPC, and commits to testifying and delivering all his findings and his opinion.

He must give a detailed account of all his discoveries and is informed of the consequences of perjury.

Experts learn about « good practice » during training courses organised by expert associations in each field of specialisation.

Penalties are possible: a fine that cannot exceed 1300 euro if the expert does not present himself before the court without any justification after having been officially invited to do so or if he refuses to carry out the examination without giving any explanation for his withdrawal.

On request of one of the parties, the judge can order the expert to reimburse



the costs brought about by his unjustified absence, his refusal to hand in his report, or his delay in submitting said report.

Special sanctions are provided with the Court experts, certified appraisers and court interpreters Act for a disciplinary procedure.

Even the duration of the expert examination is codified: normally 30 days with a possible extension to 60 days.

Once he has been instructed by the

judge, the expert has 15 days to inform the Court if he believes he will be unable to submit his report within the deadline.

In this event and if so required by exceptional circumstances, the Court can extend the deadline.

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