

INTERNATIONAL COMPARISON OF EXPERTISE AND THE STATUS OF THE EXPERT IN SELECTED EU COUNTRIES

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Abstract: The aim of this work is the evaluation, analysis and comparison of expertise and the position of an expert in selected countries of the European Union, specifically the legal requirements for the performance of expert activity in selected countries of the European Union, primary differences in the content and formal structure of expert opinions in selected countries of the European Union. For the collection and analysis of data to fulfill the goal of the work, a content analysis of the laws and standards associated with expert activity was used. Subsequently, the method of comparison and comparison of the legislation of individual selected countries of the European Union was used. The article contains a basic comparison of the national legislation of selected member states of the European Union in the field of expertise. It thus brings scope for the possible use of the information obtained for the eventual modification of legislation as well as for further research in this area focused on other related issues in the field of expertise.

Keywords: legislation, expert law, expert assessment, education of expert

1 Introduction

Expertise is becoming an increasingly important element of criminal proceedings. Confidence in such evidence is crucial to the integrity of the judicial process. However, little attention has been paid to the errors of experts who have testified in criminal cases. Although rare, their serious impact on justice and public confidence requires analysis in this area (Freer, 2020). Courts have established the principle that expert evidence must be based on "a sufficiently reliable scientific method to be admitted" through a series of legal decisions and practice guidelines. However, there is still not enough case law to determine what degree of reliability is "sufficient" (Ward, 2020). When we consider the necessary expertise and precision in the process of forensic evidence, the clarity and meaning of the questions will help us get optimal answers (Asin Sanchez, 2020). Forensic examinations and organizations generally lack experts. This is also due to the fact that there are not enough fields of study to enable students to become professionals with the appropriate knowledge, skills and responsibilities required in this field (Krulicky, 2022).

The current European legislation does not regulate the field of expertise in a comprehensive way and pays more attention to areas where the regulation is much simpler. These areas include, for example, the area of European private international law, which includes the unification of conflict of laws rules, procedural rules and the regulation of the recognition and enforcement of judgments given in one Member State in another Member State (Chirieac, 2020). There are then considerable differences in the status of experts and expert witnesses between the Member States of the European Union.

Ensuring the proper performance of expert activities is very important, as it is of crucial importance especially in disputes that usually require the preparation of an expert report. For example, in the Czech Republic, the activity of an expert is regulated by the Act on Experts, Expert Offices and Expert Institutes (Act No. 254/2019 Coll., as amended), which sets out the procedure for processing applications for registration in the list of institutions qualified for expert activities. However, not all EU countries have the same conditions for the performance of expert activities or requirements for their qualification.

The aim of this article will be to evaluate, analyze and compare the expertise and the status of the expert in selected countries of the European Union.

The following research questions will help to achieve the objective:

Question 1: What are the legal requirements for the practice of expertise in selected EU countries?

Question 2: What are the primary differences in the content and formal structure of expert reports in selected EU countries?

2 Literary research

The use of experts in legal cases has been of some concern for a long time. From the outset of their involvement, litigants have feared bias, as well as lack of knowledge and inadequate influence on expert witnesses (Rosen, 2020). There are individuals who are experts in a particular field, but at the same time have a different set of opinions and preferences regarding a given issue (Guerrero, 2021). It is therefore essential that attention is paid to issues relating to the competence of forensic experts and the quality of forensic expert databases. Therefore, the study Bjelovuk et al. (2021) examined registers of forensic experts in selected European Union countries through observation and comparison. In essence, the key factor seems to be whether good trustworthiness indicators apply equally to information seeking from experts in online and offline environments. As a consequence, expert credibility criteria may differ significantly for information seeking in online and offline environments (Boyd, 2022). Given the importance of digital evidence to many queries, the services of experts in digital forensics are often sought. In some cases, a "digital forensic expert" may be required to conduct specific investigative work and provide expert opinion (Horsman and Shavers, 2022). Online environments have also explored Kaplan et al. (2020) where they found that laypersons give lower ratings to all sets of items representing investigative techniques compared to social science experts. Article Maslova (2020) also addresses the problem of trust in experts as scientists, and the concept of expert examination is critiqued in an attempt to limit the political authority of experts in order to protect a democratic system based on equality. The critique stresses that the possibility of dissent is important for trust in experts, as it enables the detection of errors and abuses by experts.

Typically, forensic service providers do not learn how to transition from the desk or lab to the courtroom. Strict laws, especially rules of evidence, are vastly different from discussions and reports in the lab (Epstein, 2019). Forensic services were also examined in a study Reid & Howes (2020), where they found, through content analysis of expert reports and corresponding testimony, that expert evidence in courts is significantly more likely to follow recommendations than reports. An experimental study Scobie et al. (2019) examined the impact of differing expert reports on the credibility of unverified forensic evidence. They concluded that differing expert opinions can influence jury decisions, but that the assessment of the reliability of forensic evidence influences the outcome, and biases against forensic science influence the assessment of forensic evidence. In the legal field, there is a view that expert activity, because of its specificity, is much more diverse than legal proceedings, whether they take place in administrative or criminal proceedings (Khrystov and Lipynskyi, 2019). In the study Kliuiev et al. (2021) the authors, on the basis of the current legislation of the European Union, analyzed the specifics of the legal regulation and application of forensic expert research in the course of judicial proceedings. The authors concluded that a fair court decision can only be achieved if the legal provisions related to the dispute in question are taken into account. Research Depauwa (2020) reveals the minimum standards that need to be developed by examining the measures taken from a legal and forensic scientific perspective to use forensic expert evidence. He finds that in examining the feasibility of such standards, primary sources of legislation, policy documents and court decisions at the European level are compared with comparative studies of domestic standards in six jurisdictions. In the study Jones et al. (2023) using a simple contrast multivariate analysis of variance (MANOVA), they found that perceptions

did not differ between in-court, videoconferencing, and telephone testimony conditions.

Study Shaboltas et al. (2020) focused on identifying the main ethical dilemmas of psychologists who are required to prepare expert reports for court. Using a content analysis of court materials and written expert reports, they found that the specific roles and tasks of a forensic psychologist differ from those of a psychiatrist, counseling psychologist, or psychotherapist. Ethical issues are often resolved by professionals based on their own attitudes, which may pose a risk of violating professional ethics. The Court of Justice of the European Union has ruled that expert opinion can only be accepted if it is based on the standards of the international scientific community but has not stated what those standards are (Areh, Verkamp and Allan, 2022). In the context of the project Juehling et al. (2023) a statistical analysis was performed on several variables that were obtained from forensic reports and reports of findings. Regression and bivariate analyses were used to test the effect on asylum proceedings and showed no statistically significant results for an objective change in participants' asylum status.

Article Chiknaverova et al. (2019) used classification and descriptive methods in examining the applied research literature. The findings reflect factors that relate to the professional exposure of graduates and the content setting of LLM programs. Bonal-Zazo & Ortego-de-Lorenzo-Caceres (2020) Examined, through content analysis, references to the processes of document creation, capture and management in the General Archives Act. The results show that traditional archival processes are combined with more modern processes such as traceability, interoperability, information security and metadata management. Content analysis was also used in the study Howse et al. (2022) to quantify the arguments put forward to justify support or opposition to laws. It was found that supporters used arguments about crime, safety and health. Opponents of the laws 6 focused on issues such as the 'night-time economy' and the negative impacts of the laws. In contrast, the research Degtyarev (2021) used techniques such as analysis and synthesis, deduction, induction and abduction. They found that the use of modelling makes the process of regulatory experiment more predictable and appropriate by making it more initially calculated.

In the study Yi et al. (2019) semi-structured interviews were conducted with biomedical experts. The findings suggest that some aspects of research integrity need to be elaborated among Chinese biomedical researchers. Data fabrication, data falsification and plagiarism were perceived as the most serious deviations.

A content analysis of laws and standards related to expert witness work will be used to collect and analyze data for the first and second research questions. Subsequently, the method of comparison will be used and the selected countries from the European Union will be compared.

3 Methods and Data

For the first research question, a content analysis of laws and standards related to expert witness activities will be used as a data collection method. More specifically, the website www.ejustice.europa.eu will be used to select five European Union countries and identify their legal requirements for the practice of expert witnessing. These countries will be the Czech Republic, Slovakia, Poland, Belgium and France. This website will be searched for links to the laws and standards of the countries in question, which will be analyzed and compared. The main legal requirements for the practice of expert witnesses will be described, identified through content analysis, and then compared and commented on between the selected countries. In addition, a table will be drawn up of the main aspects and legal requirements that are central to expert activities and then an assessment will be made of which of the selected EU countries has the most demanding legal requirements for the exercise of expert activities and, conversely, which of the selected EU countries has the easiest route to the exercise of expert activities.

For the second research question, a content analysis of laws and standards related to expert witness activities will also be used as a data collection method. Also for this research question, the website www.e-justice.europa.eu will be used, where the same five countries of the European Union will be selected, which are the Czech Republic, Slovakia, Poland, Belgium and France. On this website, content analysis will be used to find references to the laws that regulate the formal and content structure of expert reports. Subsequently, these laws and standards will be used to analyze the current state of the art and to make comparisons between selected European Union countries. A table will also be created to illustrate the differences between the countries and then to evaluate which of the selected EU countries has the most complex formal and content requirements for the structure of expert reports and which of the countries has the simplest formal and content requirements for the structure of expert reports.

4 Results

4.1 Legal requirements for performance of expert activists

For the first research question, a content analysis of laws and standards related to expert witness activities was used as a data collection method. Specifically, five European Union countries were selected from the website www.e-justice.europa.eu and their legal requirements for the practice of expert witnessing were identified. These countries are the Czech Republic, Slovakia, Poland, Belgium and France.

Czech Republic

In the Czech Republic, expert activities are regulated by Act No. 254/2019 Coll., as amended. The registration in the list of experts is regulated by Section 5(1) of the Act on Experts (No. 254/2019 Coll.), as implemented by Decree No. 503/2020 Coll., where the criteria for registration in the list of experts are mentioned. The main criteria for the performance of expert activities include:

- registered office or place of permanent residence in the Czech Republic
- Relevant education (highest education attainable)
- five years of professional experience in the sector
- special education or certificate of professional competence
- Self-empowerment
- integrity (a person who has not been convicted of a deliberate crime or a crime committed negligently in connection with the performance of expert or business activities)
- material technical equipment and facilities
- successful completion of the Ministry of Justice entrance examination
- must not be in bankruptcy
- no revocation of the authorization to carry out expert activities has occurred in the last 5 years
- no fines of more than CZK 100,000 have been imposed in the last 3 years for offences under the Experts Act
- taking the oath

This is not the case with an expert institute or an expert bureau, where special conditions are required under Sections 6 and 7 of the Expert Witness Act. The expert is also obliged to record his/her expert activities electronically in the register of expert opinions organized by the Ministry of Justice. A very important condition for the performance of expert activities is definitely education and experience, since a person who has acquired the required education and length of active professional experience in his/her field and the sector in which he/she specializes becomes an expert. However, there are also expert branches which still require an additional certificate of professional competence in order to perform expert activities. These sectors are defined in Annex 2 to Implementing Decree No 505/2020 Coll. An expert should also continuously develop his/her professional skills and knowledge. Another condition for the performance of expert activities is the compulsory insurance of the expert.

Slovakia

In Slovakia, the Act on Experts, Interpreters and Translators as amended by the implementing decree (Act No. 382/2004 Coll., on Experts, Interpreters and Translators and on Amendments and Additions to Certain Acts) is in force. The main aspects for an expert to be entered in the register are full legal capacity, no criminal convictions, adequate education, seven years' experience in the field and sector, an examination organized by the Ministry of Justice, sufficient material equipment, an oath as an expert witness, and no administrative offences as an expert witness within three years. Compared to the Czech Republic, a specific short-term or long-term course that focuses on the legal norms governing the profession of forensic experts is still considered.

Another very important aspect is the compulsory insurance of liability for damage caused during the performance of expert activities, which is defined in Act No. 382/2004 Coll., as amended, and regulates several types of administrative offences. It is for the liability of experts that the maximum insurance is EUR 33 193. As regards judicial practice, the main legal provisions are Act No 382/2004 Coll., as amended, Decree No 228/2018 Coll., the Code of Civil Procedure, the Code of Criminal Procedure and the Administrative Code. The rules for the appointment of experts for the purposes of proceedings are the same before the civil, criminal and administrative court.

Poland

In Poland, the rules for the appointment of expert witnesses and the performance of their expert activities are laid down in the Act on the Court System and the Decree of the Minister of Justice on Expert Witnesses. Some special procedures, such as expert opinions, are regulated in the Code 10 of Civil Procedure. The main aspects for the performance of expert activities include the age limit of 25 years, theoretical and practical knowledge in a specialized field of technology, art, science or other skills. However, the criteria for the exercise of expert activities are not directly officially established. In this case, it is up to the president of the regional court to decide whether the candidate meets all the requirements for the exercise of expert activities. The main condition is the taking of the oath, as on previous counties. Experts must also comply with the civil, administrative and criminal court rules.

When an expert is registered on the list, he has no obligations, nor does he have to be educated subsequently. They also do not have to be members of a professional organisation and do not have a system of continuing professional development. If a person acts as an expert they are no longer tested on the experience and knowledge they have gained, but the way it works in practice is that if an expert wants to be appointed for a longer term they should demonstrate that they have deepened their knowledge. Experts are not required to have professional indemnity insurance.

Belgium

In Belgium, the status of experts is regulated in Sections 962 to 991 of the Code of Judicial Procedure. Both the court and the parties may call experts. In arbitration proceedings, the procedure for experts is in accordance with Sections 1676 to 1723 of the Code of Judicial Procedure. Belgium has certain criteria for an expert to be entered in the register. The criteria are regulated in Article 555/8, 4 of the Code of Judicial Procedure and the expert must demonstrate both professional competence and legal knowledge. Professional competence is demonstrated, for example, by means of a university degree obtained in the sector in which the applicant is applying for registration as an expert witness. They must also provide evidence of five years' experience in the sector in the last eight years prior to the application. Should the applicant not have a university degree, he must provide evidence of fifteen years' experience in the twenty years prior to the application for registration. There is also an obligation to undertake subsequent training and the obligations are set out in a royal decree where, for example, they undertake to abide by a code of ethics adopted by the King. As for legal

knowledge, this is demonstrated by a certificate after completing an educational course according to the Royal Decree of 30 March 2018. They must then take an oath. The liability of an expert is not defined by law and experts in Belgium are liable according to the rules of civil and contract law.

France

In France, the legislation is contained in Law No. 71-498 of 29 June 1971 on the status of expert witnesses. In the case of France, it is interesting to note that each Court of Appeal and the French Supreme Court (Court of Cassation) keep lists of experts. It is also of great interest that the courts and prosecutors may appoint as an expert any person who is qualified, but in such a case they must state the reasons for this choice. The main conditions for acting as an expert in France are being under 70 years of age, being a citizen of the European Union, being of good repute, not having been subject to administrative or disciplinary sanctions, not having been declared personally bankrupt, having a minimum period of activity with the expert's specialisation, and having to carry out their main activity in the court's circuit. They must also take an oath before being registered as an expert, as was the case in previous countries. If an expert also wants to be listed in the Court of Cassation, he or she must be listed in the Court of Appeal for at least five years. If the expert is listed for the first time, he or she must apply for re-listing after three years, and then only after five years. In addition, experts are required to carry professional indemnity insurance, which covers the professional and civil liability of the expert.

Compare

In the Table 1 is comparison of legal requirements in selected countries of the European Union.

Table 1: Comparison of legal requirements

Country	Education	Practice	Exam	Continuing education	Insurance
Czech Republic	Higher education	5 years	Yes	No	Yes
Slovakia	Corresponding	7 years	Yes	Yes	Yes
Poland	Practical and theoretical knowledge	No	No	No	No
Belgium	Higher education Without diploma	5 years 15 years	No	Yes	No
France	Corresponding	By specialization	No	Yes	Yes

Source: Own

4.2 Content and formal structure of the expert report

Czech Republic

In the Czech Republic, an expert's report must meet the formal requirements set out in Sections 27 and 28 of the Act on Experts (No. 254/2019 Coll.) and in the implementing Decree No. 503/2020 Coll. Every expert's report in the Czech Republic must be complete, truthful and reviewable. From a formal point of view, expert reports must contain a title page, terms of reference, a list of supporting documents, the finding, the opinion, the reasoning to the extent that it is reviewable, the conclusion, the annexes, the expert clause, the expert seal and the signature (if the report is in electronic form, there must be a qualified electronic signature).

The expert opinion must be prepared by the expert only in person and in the field and specialisation in which he is authorised. It must be prepared with professional care, independently, impartially and within the agreed or specified time limit. Experts in the Czech Republic are not obliged to give preliminary opinions, nor are they obliged to go beyond the terms of reference in an opinion if argued by the parties. Experts are bound by confidentiality in the context of their expert activities. An expert in the Czech Republic may refuse to provide an expert report for the reasons set out in section 19 of the Expert Witness Act. An expert report should be submitted in

written form, but the law allows, with the consent of the commissioner of the report, the submission of an expert report in oral or electronic form. The court may also ask the expert to supplement or further explain his/her expert report.

Slovakia

In Slovakia, the formal requirements for expert reports are determined by Section 17 of Act No.382/2004 Coll. Courts are not bound by expert reports and an expert report has exactly the same meaning as any other evidence.

Formally, the expert report must include a title page, introduction, report, conclusions, appendices and provisions on expertise. As in the Czech Republic, experts do not have to submit a preliminary report or address the arguments of the parties. The court may also order the expert to prepare a supplementary report. Expert reports in Slovakia are submitted in written form or orally.

Poland

In Poland, this issue is quite different, as there are no formal requirements for a specific structure of expert reports that experts have to follow. Experts do not have to submit a written expert report and in the report the expert is not obliged to comment on the arguments of the parties. In most cases, supplementary reports are also required to be documented, as it happens that not all questions from the terms of reference are answered or the court has additional questions. Experts are not obliged to provide preliminary reports. The parties to the court proceedings may request a supplementary expert report if they have additional questions for the expert. Experts are always obliged to attend the court hearing after the expert report has been prepared and may be cross-examined.

Belgium

In Belgium, the status of experts is regulated in Sections 962 to 991 of the Code of Judicial Procedure. In arbitration proceedings, the procedure for experts is in accordance with Sections 1676 to 1723 of the Code of Judicial Procedure. In the case of expert evidence, the court has the option of deciding whether expert evidence is necessary for the litigation. The judge is not bound by the expert's report. The expert must prepare the expert report in accordance with the court's instructions and in civil proceedings the court supervises the course of the expert report. It also ensures that all deadlines are met. An expert report in Belgium must contain introductory information, independent work and the findings and conclusions that the expert has made during the preparation of the report. The report must also include all documents used by the expert in its preparation. The parties may challenge the report in court and may submit their own report. The expert may be contacted by both parties to the proceedings during the preparation, provided that the communication takes place in the presence of both parties. The court may order the expert to supplement the report or to prepare another expert report.

France

In France, the Code of Criminal Procedure and the Code of Civil Procedure, Law 71-498 of 29 June 1971 on expert witnesses, which has been amended several times, notably on 18 November 2016, and the Decree of 23 December 2004, amended several times, regulate expert reports. During the preparation of the expert report, the expert may be in contact with the parties, but must respect the principle of adversarial proceedings (there are exceptions for medical or commercial confidentiality). An essential prerequisite for adversarial proceedings is that both parties to the 14 proceedings are on an equal footing and thus have an equal opportunity to defend their positions before an impartial tribunal.

As regards the formal or content structure, there is no prescribed structure of expert reports. However, in his report, the expert must clearly specify the documents on the basis of which he formed his opinion, he must respond to the parties' statements,

he must discuss his reasoning in detail and he must list all the documents submitted to him. The court shall control the course of the expert's investigation and may require a preliminary report, which the expert must send to the parties to the proceedings. In criminal proceedings, the expert must attend the hearing, in civil proceedings the court may request the expert to attend the hearing and the court may also order a supplementary report. In civil proceedings, a preliminary report is not mandatory, but is usually recommended and required. Experts submit written reports.

Compare

In the Table 2 is comparison of the content and formal structure of expert reports in selected countries of the European Union.

Table 2: Comparison of the content and formal structure of expert reports

Country	Formal structure	Content structure	Method of administration	Preliminary opinion
Czech Republic	Yes	Yes	In writing Electronically Orally	No
Slovakia	Yes	Yes	In writing Orally	No
Poland	No	No	In writing	No
Belgium	Yes	Yes	In court	No
France	No	No	In writing	Often required

Source: Own

5 Discussion

What are the legal requirements for the practice of expertise in selected EU countries?

This research question used a content analysis of laws and standards related to expert witness activities as a method of data collection. Compared to the research Reid & Howes (2020), a wider range of laws were used using content analysis. Five countries were selected, namely the Czech Republic, Slovakia, Poland, Belgium and France. The key legal requirements for the practice of expert witnessing that were identified by the content analysis were described. Furthermore, Table 1 has been drawn up, which mentions the main aspects and legal requirements that are central to expert activities.

Table 1 shows that the Czech Republic has some of the most comprehensive requirements of the selected countries, as does Slovakia. The longest professional experience requirements are in Belgium; if the applicant for registration as an expert does not have a university degree, he or she must demonstrate 15 years of experience. If they do, the requirement is only 5 years of professional experience. In Slovakia, the professional experience requirement is 7 years with a relevant degree. In the Czech Republic, the emphasis is on education, which should be as attainable as possible. There are also requirements for an entrance examination, as in Slovakia. In the case of France, both education and experience depend on the specialisation of the sector in which the applicant is applying for registration. However, there is no need for an entrance examination, as in the case of Belgium and Poland. Only Poland does not require further training, the other selected countries do. Similarly, Poland does not require professional indemnity insurance.

It is thus clear from the table that Poland has the easiest route to expert witness practice, as the criteria for expert witness practice are not directly established officially. In this case, it is up to the president of the regional court to decide whether the candidate fulfils all the requirements to practise as an expert. On the other hand, the Czech Republic and Slovakia have the most difficult path to practise as an expert, with a strong emphasis on the entrance examination and subsequent training.

What are the primary differences in the content and formal structure of expert reports in selected EU countries?

For the second research question, a content analysis of laws and standards related to expert witness activities was also used as a

data collection method. The same five countries of the European Union were selected for this research question, which are the Czech Republic, Slovakia, 16 Poland, Belgium and France. A table was also created to illustrate the differences between the countries in the formal and content structures of expert reports. Compared to the study Shaboltas et al. (2020) all the formal and content requirements of expert reports in the countries were analysed.

Table 2 shows that experts in the Czech Republic, Slovakia and Belgium are obliged to follow the formal and content structure. In the case of France, the expert must clearly specify in his report the documents on the basis of which he has based his report, he must respond to the parties' statements, he must discuss his reasoning in detail and he must list all the documents submitted to him. There are no formal requirements for Poland. The submission of the opinion depends on the court but, in most cases, they require written opinions. For the countries examined, the expert is not obliged to provide a preliminary report, but in the case of France, in most cases it is recommended and required.

Thus, it is clear from the table that Poland has the least extensive requirements for the preparation of an expert report, as there is no formal or substantive structure in Poland, no need to submit a preliminary report, and the method of submission is in writing. In contrast, the Czech Republic and Slovakia have the most comprehensive requirements, as both countries have requirements for a precise formal and content structure. However, among these countries, the Czech Republic has the more demanding formal requirements, as expert reports must include a cover page, terms of reference, a list of supporting documents, the finding, the opinion, the reasoning to the extent that it is reviewable, a conclusion, annexes, an expert clause, an expert seal and a signature. In the case of Slovakia, it is only the title page, introduction, report, conclusions, annexes and expert clause.

6 Conclusion

The aim of this article was to evaluate, analyze and compare the expert and the status of the expert in selected EU countries, specifically the legal requirements for the performance of expert activities in selected EU countries, the primary differences in the content and formal.

The aim of the work was completely fulfilled. Five countries were selected, namely the Czech Republic, Slovakia, Poland, Belgium, and France. The key legal requirements for the performance of expert activities were described and the content analysis revealed that the Czech Republic has one of the most comprehensive requirements for the performance of expert activities among the selected countries, as does Slovakia.

Furthermore, similarities and differences were found in the content and formal structure of expert reports in the above mentioned selected countries and their legislation. Higher requirements for the formal and content structure of expert reports are imposed on experts in the Czech Republic, Slovakia and Belgium.

The work has been limited to a selected sample of national legislations, so there is room for further development of this topic across other selected countries.

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