

EXPERT WITNESS LIABILITY

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Abstract: Currently, a number of experts in the Czech Republic and Slovakia are ceasing their activities. For many of them, the reason is mandatory examinations; in some other cases, it is, for example, the unclear liability of the expert witness along with large penalties for violation of given rules. The purpose of the paper is to define the fundamental parameters of expert witness liability in the Czech Republic and Slovakia in the light of the global trends in the field. The primary method to achieve this goal was content analysis. The data source used was legal documents, as well as opinions published in scholarly and expert publications. The liability of expert witnesses lies not only in the compliance with the set rules and standards but also in the ability to adapt to new challenges and ensure that their work is as relevant and accurate as possible. Expert witnesses thus bear liability at multiple levels, including ethics, professional standards, legal obligations, and practical considerations. Nevertheless, there is no established judicial practice in this area in the Czech Republic and Slovakia.

Keywords: expert witness, public authority, liability, expert law.

1 Introduction

At the time of a common state of Czechia and Slovakia, expert activities were governed by Act No. 36/1967 Coll., on Experts and Interpreters, as amended.

The Slovak Republic adopted a separate regulation on 26 May 2004. Specifically, it was Act No. 382/2004 Coll., on Experts, Interpreters and Translators and on Amendments and Additions to some other Acts, which is still in force. The Act has been amended more than ten times (including indirect amendments) and is still in force today.

The Czech Republic adopted a separate regulation many years later, specifically on 10 September 2019, and this Act No. 254/2019 Coll., on Experts, Expert Offices and Expert Institutes has not been amended so far. However, the Ministry of Justice of the Czech Republic is currently preparing a so-called technical amendment to the Act, which is supposed to resolve some technical problems of the current legislation in force (as a result of which the number of experts in the Czech Republic has decreased significantly), the problem of expert opinion registration, etc.

The 1967 regulation on expert witness activities defined expert witnesses primarily as experts in their field. At the same time, it established a basic range of procedural duties and a minimum amount of knowledge of law. From the perspective of the exercise of expert activities, experts were thus amateurs. Nevertheless, both the current Czech and Slovak legislation significantly changes this view of expert activities. Expert witnesses are not only perceived as experts in the field in which they work (economists, engineers, builders, etc.), but also professional experts. They must have sufficient knowledge of law, must be experts in methodology, be psychologists, and have adequate communication skills. Therefore, for registration as an expert, both legal regulations require legal capacity, personal and professional integrity, initial training (hence minimal professional qualification for performing expert activities), professional examination, etc. This way the applicants for registration on the list of experts prove their competence (both knowledge and skills). The legislation of both states thus specifies who is an expert and what they must know, and deals with the performance of expert activities, including experts' rights and duties, which are very much related to the liability of expert witnesses.

The liability of expert witnesses is addressed very briefly in both legal regulations. In Slovakia, the Act on Experts mentions liability for selected expert acts or for failure to fulfil obligations in several provisions of the Act. In addition, it ties the liability of the expert to the obligation to insure for damage arising from the performance of expert activities. The Czech legislation addresses

liability in a separate section of the Act on Experts, namely the provision of Section 21 Liability for the performance of expert activities. The provision includes two paragraphs: the first paragraph states that the expert is obliged to compensate for the damage they have caused in connection with the performance of expert activities; according to the second paragraph, the expert may be exempted from liability if they prove that the damage could not have been prevented and that the expert had made all the efforts that could be required to prevent such damage. The Czech Act on Experts also links liability to the performance of expert activities and to breaches arising from the established rights and duties of the expert. At present, experts are obliged to take out an insurance policy against damage relating to the performance of the expert activities. Both Czech and Slovak legislation consider the breach of the obligation to insure to be a completely unprecedented offence. However, an amendment to the Czech Act on Experts envisages the abolition of the obligation of experts to take out insurance. There are several reasons: firstly, in some fields of expertise, expert opinions are very rarely required; secondly, there are exceptions for contracts where, in fact, the damage caused by the expert is not covered by insurance.

This makes the issue of liability for damages even more pressing. Liability has been adjudicated many times in the past. In particular, in the Czech Republic, there is a body of case law relating to liability for the performance of expert activities established before the new legislation was introduced.

Expert activity is undergoing a continuous development. In the Czech Republic, legal practice has not been established yet; similarly, in Slovakia, liability for the performance of expert activities is still relevant.

Expertise extends to private law (civil law) and public law (criminal law and administrative law). The damage caused by the performance of expert activities thus always plays a role.

The objective of the paper is to assess the basic parameters of the liability of expert witnesses in the light of the legal system of the Czech Republic and Slovakia.

2 Materials and Methods

When considering *de lege ferenda*, it will be necessary to review not only the relevant Czech and Slovak literature, but it will be interesting to see how the issue is addressed in developed countries around the globe and where it is headed ideologically. Thus the source of data would mainly be Web of Science or Scopus indexed journals.

The method of data collection will be content analysis. The general source of data will be the witness expert laws of both countries, namely 254/2019 Coll. in the Czech Republic, and 382/2004 Coll. in the Slovak Republic, their implementing decrees and related laws. Furthermore, it will be necessary to take into account the global trends in witness expert liability presented by scientific and professional journals. For the processing of data, the following formal logic tools will be used: analysis, synthesis, generalisation, deduction, abduction, deduction, comparison, or scientific observation, etc.

3 Results

3.1 Main trends in expert witness liability

The duties of an expert witness are crucial when it comes to providing evidence in court cases/trials. Expert witnesses play an important role in helping the court understand complex technical issues and they provide insights based on their knowledge and experience. It is essential that experts are impartial, objective and provide accurate evidence to support their opinions. If called upon to provide expert evidence, a witness expert will need to perform their role with transparency, professionalism and

integrity to achieve the best outcome for all parties involved (Rochester, 2001). The expert witness is required to produce the expert report by himself. Breach of the duty to produce an expert report on one's own responsibility may result in loss of entitlement to remuneration. The commissioning court and the (potential) expert are therefore advised to disclose foreseeable difficulties with regard to qualifications, time of submission or content of the order openly and in a timely manner. This allows the court to either modify or clarify the competencies of the witness expert or to select another expert if necessary; the expert will avoid any misunderstanding or conflicts (Lesting, 2021). This alone refers to the responsibility of each individual expert witness. A witness expert should carefully evaluate whether he or she has sufficient capacity in terms of time, expertise, and physical strength to properly give an expert opinion. And if the expert witness concludes that they have insufficient capacity to provide an expert opinion, the expert should responsibly communicate this fact to their client. This is because open and transparent communication about any limitations or difficulties allows for timely resolution and minimises potential problems throughout the process.

As regards the strict liability of the expert witness, a distinction must be made between liability under civil law and criminal law. Liability in criminal law means punishment for culpable and unlawful committing a criminal offence in the legal sense; liability in civil law means compensation to another citizen. Criminal prosecutions are conducted *ex officio*. A prerequisite for criminal prosecution in civil law is the victim's conduct (Jansen, 1996).

It is therefore clear that expert witnesses can play an important role in assisting the court in civil and criminal cases. When they are called, their testimony is relied upon to help identify disputed facts to the extent that the parties are in dispute. Thus, the court must believe that the expert has been properly instructed and that he or she is aware of his or her responsibility to act with no bias (Rochester, n.d.). Further, expert witnesses have a duty to keep up to date in their specific field of expertise (The Role & Responsibilities of an Expert Witness, by Fiona Brassil, n.d.).

According to "No Two Sides in Forensic Science | TFEG Singapore" (2018), expert witnesses actually have the privilege, albeit a significant responsibility, to produce expert reports in their field of expertise to assist in legal proceedings. Unlike the prosecutor and defense counsel in adversarial proceedings, each of whom supports a particular position, forensic science does not have an advocacy role. Simply put, there are no parties in forensic science. It does not matter which party engages a forensic expert; it only matters whether the expertise of the forensic expert can assist in the search for truth. Wahlberg & Dahlman (2021) mapped the extent of epistemic authority of expert witnesses to interpret and explain evidence and uncertainties that fall within their expertise. They argue that expert witnesses should only testify on questions of fact and should not opine on questions of law and other ultimate judicial questions, such as the likelihood of a hypothesis given the evidence. Rather than that, expert witnesses should facilitate the decision-maker's assessment of how strongly the evidence supports the underlying hypothesis given all the uncertainties involved.

This suggests that expert witnesses should be cautious in providing their expertise, focusing on factual issues and leaving the legal assessment to the decision-makers, which is essential to the expert witness's liability and their role in the judicial system. It is also related to this that one of the greatest tragedies in the criminal justice system is to convict a person for a crime that they did not commit. Wrongful convictions can have immeasurable consequences for exonerees, original victims of crime and their families. In addition, they can also have long-term negative effects on witnesses, investigators, lawyers, judges, and other criminal justice professionals involved in wrongful convictions (LaPorte, 2017).

Expert witnesses are nowadays common members of criminal and civil trials. The use of experts and the admissibility of their

scientific knowledge has changed over the last 250 years, with the concept of allowing an expert to give an opinion on the facts of other witnesses being allowed by Lord Mansfield in *Folkes vs Chadd* in 1782 (Milroy, 2017). National legal statutes set out the duties and responsibilities of expert witnesses and their right to conduct expert evidence. Most countries have defined requirements (education, training and/or certification) for recognition as a expert witness and for conducting forensic examinations in a particular field (European E-Justice Portal - Forensic Experts, 2021).

The issue of the expert witness's liability is also related to the definition of the judge position and the expert position in judicial decision making. In the 19th century, the practice was that an expert witness could not be held liable for errors in their opinion if their conclusions were accepted by a judgment: this would challenge the authority of *res iudicata*. Now case law recognises the preponderant position of an expert witness in assessing technical issues beyond the knowledge of the judge. The expert must observe the guiding principles of judicial procedure. Their liability is engaged for many reasons: the discipline specific to forensic expertise and the ordinary discipline sometimes overlap, the criminal liability under common law for breach of professional secrecy, and finally the civil liability under common law which imposes financial responsibility for their harmful actions (Gramond, 2020). This was followed up by David & Lewis (2018) who argue that future liability relating to expert witness testimony in criminal or civil cases was rarely considered in recent years. However, this situation has changed considerably in the 21st century. While some immunity may exist when expert witnesses testify on behalf of a government agency, it is often limited or nonexistent. Moreover, no such protection exists in civil cases. It is important that experts be aware of what they can do to protect themselves from potential legal action as a result of their testimony. According to Cappellino (2021), immunity for expert witnesses has always existed in the United States legal system as the doctrine originated in 16th century Old English common law. The doctrine of immunity for testimony (also referred to as privilege) is a common law doctrine that protects witnesses who testify in court proceedings from legal actions arising out of their testimony. The public policy rationale for this doctrine is that witnesses should feel that they can testify the truth without fear or intimidation that a retaliatory civil action would be brought against them. The U.S. Supreme Court reiterated the importance of witness immunity in *Briscoe vs. LaHue*, 460 U.S. 325 (1983), which held that all witnesses, including law enforcement officers, are absolutely immune from civil liability for perjured testimony given in court. In the *Briscoe* case, a convicted man brought an action against police officers who gave perjured testimony in a criminal trial that led to the plaintiff's conviction. The court ruled that the officers were immune from civil liability, noting that the possibility of a threatened trial could invalidate the testimony. However, some countries and courts began to criticize some aspects of this immunity. Courts have begun to recognize that expert witnesses may be liable if they are negligent in their professional duties. This is partly due to the boom in the use of expert witnesses over the past thirty years and the expansion in the areas of professional and scientific research. Binder (2002) explained the traditional concept of expert witness's immunity and showed how a number of factors have caused that this immunity weakened. These factors included the increase in the number of expert witnesses, the inadequacy of traditional safeguards against potential prosecution for perjury and cross-examination, a higher degree of attorney misconduct, the lack of protection for the injured party against unscrupulous witnesses, and the ineffectiveness of the judgement in *Daubert vs. Merrell Dow Pharmaceuticals*.

The above studies clearly show that the liability of expert witnesses is increasing, mainly due to changes in the legal context and attitudes towards their role. The evolution of the perception of liability from the historical exemption from errors in judgment to the current emphasis on the predominant role of the expert witness in reviewing professional issues suggests a continuing development in forensic expertise.

In 2011, the UK Supreme Court abolished the immunity of expert witnesses from prosecution for misconduct. Cerchia (2013) discussed whether similar changes would lead to similar results in Italy. In the Italian system, they may be liable, but in practice expert witnesses have a kind of informal 'immunity' protecting them from actions for damages. The discrepancy between the theoretical law and the practical position can be explained by the fact that expert witnesses in fact enjoy some protection from lawsuits under the Italian legal system.

In providing expert testimony in asylum proceedings for mentally ill Mexicans, Duncan & Reyes-Foster (2022) were regularly asked to reduce individual subjects to diagnostic categories and the entire country to one of its worst performing institutions. Attorneys and judges were asked how does Mexican "culture" - through its institutions and mental hospitals - treat the mentally ill? There must be a clear and often single "truth" for judges deciding asylum claims. However, as Nikolas Rose argued, "truth is always embedded in acts of violence". The authors therefore addressed an issue inherent in this work: to whom - and to what truths - are anthropological expert witnesses accountable? Although the aforementioned work was focused on anthropological expert witnesses, it is necessary to address others as well, and this is because this particular topic is important in other fields as well.

According to Paineau et al. (2020), the dual role of a forensic medical examiner entails several professional duties and responsibilities that are crucial to justice. Reflection on the ethical aspects of this function reveals that regulations and jurisprudence often do not define all that is essential for this function. The forensic medical examiner delegates extensive responsibilities to medical professionals although they interact with the justice system. They are held accountable for any errors in their medical and expert work in terms of civil, criminal and disciplinary law both under the control of the judicial system and their peers. They also pointed to the ambiguity of the status of a forensic medical expert who despite the importance of their role may not be officially recognized as a regulated legal profession. This merge of the medical sphere with the judicial system creates a challenging position where one must not only meet ethical requirements but also deal with the legal and professional challenges associated with this multifunctional role.

Another specific example can be applied to an expert witness in a forensic engineering project. By agreeing to be an expert witness in a forensic engineering project, the engineer inherently takes on a special responsibility. As a rule, these responsibilities can be defined through the ASCE Code of Ethics. The health, safety, and the public welfare are paramount among the canons of the Code of Ethics. This means not becoming an advocate for your client, but being an advocate for the public welfare. In some cases, an expert may feel a conflict with the need to criticize the work of other engineers. How the expert must handle this situation will be dictated by consideration of the canons of the Code of Ethics (Nelson et al. 2022).

In general, all 3 previous articles highlight the importance of ethics in the work of expert witnesses and discuss the challenges associated with the ambiguity or lack of definition of some aspects of their role. They further agree on the very complex ethical and professional liability.

These factors can also result in a miscarriage of justice, which can arise as a result of misinterpretation of expert reports, inadequate communication between experts and the court, or inaccurate evaluation of evidence. According to Kennedy et al. (2020), the Forensic Science Regulator was formed in 2008 following a series of high-profile miscarriages of justice in the UK associated with questionable expert evidence. The main objective of this role was to improve the level of competence of experts and forensic practices. At present, there is no statutory requirement for practitioners to gain accreditation to continue working for the criminal justice system in England and Wales. However, the Forensic Science Regulator is lobbying the UK Government to make this mandatory. Therefore, the authors focused on the challenge of incorporating scientific methodology

into digital forensic investigations where malicious software ('malware') has been identified. Based on the literature, legal, regulatory and practical needs, they defined a set of requirements to address this issue. They presented a framework called the "Malware Analysis Tool Evaluation Framework" (MATEF) that addresses this lack of methodology for evaluating software tools used to perform dynamic malware analysis during investigations involving malware and discusses how it meets the defined requirements. As a whole, this article can impact the accountability of forensic examiners by emphasizing improved standards, requiring accreditation, and promoting a scientific approach to digital forensic investigations through new methodologies and tools.

The question is what can be the impact the liability of expert witnesses. Craig (2021) looked at the impact of the new rules of court procedure introduced in England and Wales in January 2013 on expert witness psychologists (EWPsychs). In order to identify the current issues facing EWPsychs, a mixed methods approach was used which involved a questionnaire survey of 58 psychological experts and qualitative data analysis. Several key topics emerged from the results, including training and knowledge, changes to the Legal Aid Bureau's court rules and fees, quality of reports, pressure to change opinions, conflicts among EWPsychs, and feedback from expert witnesses. A significant number of psychologists working as expert witnesses did not take any specific training to become expert witnesses, and some reported that limited legal aid fees had influenced their decision to become expert witnesses. Respondents also expressed the view that legal aid rates do not adequately reflect the value of their work. This suggests that the liability of expert witnesses may be influenced by their remuneration. Indeed, if expert witnesses feel unhappy that their remuneration for legal aid does not reflect the value of their work, this may affect their motivation to provide high quality and carefully produced expert reports. Financial pressure may cause them to try to speed up the process or provide inadequate expert evidence, which could have an adverse effect on the overall quality of their work and their accountability in the lawsuit.

Perisa & Arbanas (2023) studied the issues of inconclusive or missing information in forensic psychiatric evaluations and highlighted the possibility of supplementing evaluations when new information is available. A study conducted at the Vrapka University Psychiatric Hospital analyzed 42 cases of supplementary evaluations to identify factors associated with changes in these evaluations. Findings showed that changes were more common in those diagnosed with a personality disorder (PD) only compared to those with comorbidities, particularly substance use disorders. Defendants diagnosed with a substance use disorder were 63.7% less likely to have their assessment changed. The study also reported that the evaluation remained unchanged when new information was caused by the testimony of new witnesses. It concluded that judges should be more critical of requests for supplementing reports in light of the principle of judicial economy. This may again imply that emphasizing a more critical approach by the judge when requesting a supporting report promotes the responsibility of expert witnesses to provide their reports in a manner that minimizes the need for follow-up and is consistent with the principle of economy in the legal system.

Concerned about the distortion of evidence that arises from the strong incentive of litigants to misrepresent information provided to fact-finders, legal scholars and commentators have long suggested that courts appoint their own litigation-neutral advisors. Accordingly, the issue of litigants losing the incentive to provide information when judges seek advice from court-appointed experts has been examined. The assignment of witness experts was found to involve a trade-off: although these experts in general help judges obtain more information, thereby reducing errors during trials, they weaken litigants' incentives to provide expert information, thereby undermining the adversarial nature of the current American legal system (Kim & Koh, 2020). Thus, any shifts in the course of litigation, particularly with respect to the motivation of parties and the role of expert witnesses, may

impact the liability of these experts in the performance of their duties. The credibility of a court-appointed witness expert is a critical factor affecting their ability to implement the duties in a trial. Ferreira & Wingrove (2023) experimentally tested jurors' claims that their perceptions of an expert's credibility are independently influenced by the expert's training and experience, with expert experience having a greater influence. Previously, only the combined influence of these variables was studied. Mock jurors (N = 553) read a trial summary containing testimony from an expert witness with high or low training and high or low experience. They then rendered a judgement and rated the credibility of the expert. The results primarily showed that training and experience independently influenced expert credibility although the latter had only a slightly greater effect.

Now let's see a more specific example. A recent decision in the United Kingdom in a clinical negligence case has clearly indicated that an expert witness must be independent and that caution should be exercised in taking instructions from a solicitor when asked to produce a report in a litigation, particularly if, as a potential expert witness, you have any relationship or acquaintance with the parties. In *EXP-V-Barker* (2017 EWCA CIV 63), the UK Court of Appeal held that an expert witness (a consultant neuroradiologist) who worked with the defendant and co-authored research papers with the defendant, also a neuroradiologist, was too closely connected with him to perform his duty as an expert in giving independent and objective evidence (The Role & Responsibilities of an Expert Witness, by Fiona Brassil, n.d.). Communication in the judicial context, including the use of counterfactual ideas, affects the evaluation of lay jurors and judges, and it may also affect their perception of the credibility of expert witnesses. Indeed, experts are often dependent on how they are perceived in the courtroom. This is demonstrated by Catellani et al. (2021) who studied the influence of counterfactual ideas on attributions of cause and responsibility in a judicial setting. In two studies, participants, including lay jurors and judges, were asked to read a medical malpractice case with counterfactual content. The results indicated that the use of counterfactual ideas had a strong influence on the evaluation of both groups. This communication also mitigated the effect of outcome predictability on attributions of responsibility. The study highlighted how counterfactual communication can shape decision making in a judicial context and suggested possible implications for training programs and interventions for judges.

In terms of discussing specific types of liability, according to Ryskamp (2022), expert witnesses can face liability from many sources at present. These include disciplinary actions by professional associations, sanctions imposed by national and other licensing boards, or civil actions. Not all forms of liability apply in all cases. The approach is rather tailored to the type and extent of the alleged misconduct of an expert witness.

All the above shows that the liability of expert witnesses not only lies in adherence to rules and standards, but also in the ability to adapt to new challenges to ensure that their work is as relevant and accurate as possible. Thus, expert witnesses have responsibilities at several levels, including ethics, professional standards, legal obligations and practical considerations.

3.2 Basic establishment of expert witness liability in the Czech Republic and Slovakia

The Czech regulation, i.e., Act No. 254/2019 Coll., addresses the duties of experts especially in the following provisions:

- § 1 General provisions on the execution of expert activities: the provision stipulates the basic principles of the performance of expert activities.
- § 11 Authorization to perform expert activities: the provision stipulates the obligation of the expert to notify the facts that are a condition for the performance of expert activities within a specified period.
- § 13 Suspension of authorization to perform expert activities: Paragraph 4 deals with the obligation to

complete the work in progress in the event of suspension of expert activities authorization. The only exception are expert opinions whose completion is contrary to the reason for the suspension of the expert activities.

- § 16 Data recorded in the list of experts: the expert is obliged to notify and document changes in the data in the list of experts, if any, within a specified period.
- § 18 Exclusion of expert: experts shall not perform any act in the event they are biased. In the event of potential bias, the expert shall only notify the contracting authority. The decision on the bias is a responsibility of the public authority.
- § 19 Refusal to perform expert activities: the provision specifies the conditions under which an expert must refuse to perform expert activities.
- § 20 Confidentiality: experts are obliged to maintain confidentiality of facts of which they have learned in connection with the performance of expert activities.
- § 22 Insurance of experts: experts are obliged to take out insurance in case they cause damage in connection with the performance of expert activities. Also, they are obliged to notify the Ministry about the conclusion, changes, and termination of the insurance.
- § 24 Notification obligation: experts are obliged to notify of facts that might lead to the suspension or termination of authorization to perform expert activities.
- § 25 Estimated costs: upon the request of the public authority, experts are obliged to make a preliminary estimate of the amount of the expert fee.
- § 27 Expert report: the provision deals with the obligation of experts to prepare a copy of the report for archiving and to archive such a report.
- § 28 Particulars of expert report: the provision deals with the obligation of experts to certify the expert report.
- § 29 Records of expert reports: to the extent prescribed by law, experts are obliged to keep record of information on all expert reports commissioned to them.
- § 31 Remuneration. Experts are obliged to specify in the report whether a contractual remuneration for the performance of expert activities has been agreed.
- § 32 Reimbursement of expenses and compensation for loss of time, including travel time: the provision specifies the obligation to pay value added tax.
- § 34 Billing and payment: experts are obliged to bill the expert fees at the same time as the expert report is submitted.

Section 14 Cancellation of the authorisation to practice as an expert witness in the provisions of paragraph (e)(1) stipulates that the Ministry (of Justice) would cancel the authorisation to practice as an expert witness if the expert has seriously or repeatedly violated the obligations set out in the Act on Experts. This makes the expert liable for the breach of the obligations arising from the Act on Experts. However, a special category is the expert's liability for the performance of judicial expert activity. This liability is explicitly attributed to the expert in Section 21 Liability for the performance of judicial expert activity.

In connection with the expert's liability, the provisions of Section 39, Section 40, Section 41 Offences and Section 42 Common Provisions on Offences need to be discussed at least to a certain extent. The provisions categorise the breach of the obligations arising from the Act on Experts according to their impact and social seriousness of the offence. Consequently, it determines penalties for each breach.

In addition to the above, the Act also deals with the obligations of natural and legal persons before their registration in the register of experts and after their removal.

The provisions of the Act will apply *mutatis mutandis* to expert institutes and consultants.

The Slovak Act on Experts, i.e. Act 382/2004 Coll., as amended, sets out the requirements for expert witness activity in the following provisions:

- § 2 General provisions: the expert must proceed in accordance with the generally binding and applicable regulations. The expert must provide assistance to the court or any other public authority.
- § 4 Register of experts, interpreters and translators: the expert must notify and prove to the Ministry (of Justice) any changes from the data entered in the register.
- § 7a Temporary suspension of judicial expert activity: the expert must inform the contracting authority of temporary suspension of the expert's activity, and subsequently return all documents for the expert's report and advance payments for the expert's fee.
- § 7b Suspension of judicial expert activity: the expert must inform the contracting authority of temporary suspension of the expert's activity, and subsequently return all documents for the expert's report and advance payments for the expert's fee.
- § 9 Requirements for commencement of judicial expert activity: the expert must provide the Ministry (of Justice) with proof of liability insurance for damage caused by the performance of judicial expert activity in the specified amount. Paragraph 1 stipulates that an expert witness can only perform expert activity if they have taken out liability insurance for damage that may arise in connection with their expert activity.
- § 10 Identification marks: the expert must notify the Ministry in case of the loss or theft of identification marks.
- § 11 Exclusion of an expert, interpreter or applicant: the expert witness must notify the contracting authority of any bias or other facts for which they cannot provide the expert service.
- § 12 Refusal to perform: the expert must refuse to provide the expert service in the specified cases.
- § 13 Duty of confidentiality: the expert must maintain the confidentiality of any facts that they may become aware in connection with the judicial expert activity.
- § 14 Logbook: the expert must keep a logbook of their judicial expert activity in electronic form.
- § 14 Expertise: the provision defines the general principles of the judicial expert activity.
- § 17 Expert reports / opinions: the provision defines the obligations to provide accurate expert reports in terms of methodology and facts with the correct structure. And it specifies other requirements for an expert report / opinion.
- § 30 (heading deleted): the expert must take training courses and increase their qualification to the extent specified by the Ministry and participate in professional competence testing.
- § 34 Temporary provisions: it describes the obligations of experts appointed under the previous legislation.

Penalties for non-compliance are set out in Section 26 Other Administrative Offences.

In addition to the above, the Act also describes the obligations of natural and legal persons before their registration in the register of judicial experts and after their removal.

The provisions of the Act will apply *mutatis mutandis* to expert institutes.

4 Discussion and Conclusions

The aim of this paper was to review the general parameters of the expert witness liability in the light of the legal systems of the Czech Republic and the Slovak Republic.

The paper focuses on judicial expert activity. However, it is apparent that expert witness law overlaps several fields of law where one cannot be separated from the other. Expert law is rather marginal in the current educational system both in the Czech Republic and the Slovak Republic. At law schools, expert

law is mentioned rather in the context of some lectures on selected subjects, most often in the field of criminal law.

However, expert witness law is a complex organism that should be understood as a whole, albeit spanning several fields of law.

As far as the liability of expert witnesses is concerned, the legislation, although based on common sources of law, is different in the two countries.

The Czech legislation endeavours to unambiguously define the liability of expert witnesses for judicial expert activity and liability for damage arising therefrom. The Slovak legislation envisages that the expert is insured and damage that may be inadvertently caused by the expert is covered by such liability insurance.

However, different basis can be used to write the paper. First of all, both legal systems assume that damage from judicial expert activity may be incurred by the party requesting an expert opinion / report, or by a third party, and above all by the state due to the failure to perform the duties imposed on expert witnesses by law.

Furthermore, it is indisputable that damage that may be incurred may be social, not defined in financial terms. However, it can also be a large amount. This makes it clear that damage can be both financial and non-financial. It can be financially insignificant as well as it can be financially significant.

Both legal regulations assume that the expert witness will be insured against damage, and such damage will be remediated by the insurance policy. However, the Czech legislation further defines liability for damages in a separate provision of the Act on Experts, namely Section 21 which has two paragraphs. The current insurance practice contains exemptions from claims that makes the insurance meaningless. On the contrary, the Slovak legislation assumes that the insurance will cover any unintentional damage caused by the expert witness in expert evidence and in the development of an expert's report.

In both jurisdictions, deliberately erroneous or incorrect testimony is presumed to be a criminal offence, similar to perjury. In such case, however, the expert witness is held fully liable.

The Czech legislation considers the liberalisation grounds. If the expert witness has made all the efforts to prevent damage, they will be released from liability for any damage caused. The Slovak legislation on judicial experts does not explicitly reflect on liberalisation grounds. However, they can possibly be deduced from the provisions of other legislation.

As a result, both countries are still uncertain about for what and to what extent the expert witnesses in both countries are held liable. Not only is the interpretation of the Act on Judicial Experts vague in both countries, but legal practice has not been established so far.

The contribution of the paper is primarily seen in the definition of the present state and possible direction how to solve a very complex issue, which hampers now the work of experts and public authorities. The number of expert witnesses has been decreasing in the long term, their task is to convey a complex problem in a comprehensible form to facilitate the decision in a case.

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