

EXPERT EVIDENCE IN SLOVAK AND GERMAN CIVIL PROCEDURE

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Introduction

Expert evidence belongs to frequently utilized means of proof. It is exercised by courts in judicial practice provided that professional knowledge is necessary to review a certain fact. Although the nature and purpose of its usage as stated above are in legal orders of particular countries identical, different methods of its legal regulations are utilized to reach and ensure the purpose of this means of proof. In the article the author pays attention to the significance of the expert evidence, emphasizes and underlines the disparities of its regulation within the Slovak and German civil procedure and proceeding from the comparison of the both legal regulations seeks to lay down and present the starting points and potential solutions for the advancement of utilization of this means of proof.

Expert

The Slovak legal regulation defines the expert as a natural person or legal entity entitled by the state to act according to the Act of Experts, Interpreters and Translators; is registered in the list of experts, interpreters and translators or is not registered in this list, but is appointed an expert. The German legal regulation does not define the expert but according to the German legal theory it is a person with special knowledge.

The court uses the activity of an expert in cases, when the evaluation of the relevant facts depends on special knowledge or experience. Whereas in Slovakia the judge is obliged to appoint an expert also in situation when he commands of the necessary knowledge, in

Germany the legal theory allows the judge to evaluate these facts by his own when he provides with the needed knowledge or experience. The parties must be informed.

List of Experts and Appointment of Expert

The activity, competence and the duties of the Slovak experts are regulated in a special Act No. 382/2004 Z.z. The experts are mostly experts registered in the official list of experts at the Ministry of Justice of the Slovak republic. The list is available on the internet, on the official website of the Ministry (www.justice.gov.sk). Non registered experts can also be appointed the experts by the court only in case, that there is no other registered expert for the particular field or branch, or the registered expert is not available or is available under inadequate difficulties. They must agree with the appointment and give the promise in front of the court. If an expert's report was made by an expert who did not give the promise during the judicial procedure and the judgment depends on evaluation of the facts where the special knowledge is needed, it would mean a failure of the procedure. This failure can cause a false judgment if the court took the testimony of the expert and the action of the expert (who did not give the promise) for an expert report.

Within the German judicial procedure the parties are allowed to choose an expert. The court is bound by their choice. The choice of the parties can be limited by the court only in case concerning the number of the experts. If the parties do not agree upon the expert, the expert is appointed by the court, which can ask the parties to bring proposals concerning the expert. By the choice made by the court the officially appointed experts must be preferred.

The legal base of the officially appointed experts is embedded in the § 36 Tradesman Act (Gewerbeordnung) and § 91 Craftsman Act (Handwerkordnung). The experts are appointed on their own request by an official body assigned by the government of the particular state or entitled by a particular Act. The government of particular state can entitle bodies to appoint experts. Those bodies are first of all Industrial and Commercial Chamber, Chamber of Architects, Chamber of Engineers, Chamber of Farmers, etc. Unlike to Slovakia, there is no official register of experts in Germany. If the parties do not choose any expert, the court asks the particular Chamber for the list of experts.

Expert report

The written expert report is preferred in the legal regulations of both countries. However the reality is different. The Slovak civil procedure does not contain any statements concerning some directions for the judges while hearing the verbal report of the expert in the court. A very limited regulation offers the Act No. 382/2004 Z.z. according to which the protocol has to encompass data of the expert clause. The German legal regulation refers to statements concerning the witness interrogation.

According to the § 17 Act. No. 382/2004 Z.z. the written expert report is comprised of the label page, introduction, report, conclusion, annexes and expert clause. The Slovak experts has direct, vested instructions how to create a competent and qualified written expert report. On the other hand there is no legal regulation in Germany concerning instructions for the experts while creating a written report. An important help is offered by scientific publications published by more experienced experts.

Conclusion

The importance and fundamental of the expert evidence is in both countries identical. Whereas the Slovak the Code of Civil procedure contains just a general regulation of expert evidence, the Act No. 382/2004 Z.z. regulates enough the conditions of the expert's activity, rights and duties. The official list of experts seems to be a great advantage for the judges by choosing the appropriate expert. In the German regulation the statements concerning the essentials of the written report are absent. This lack of regulation can cause a situation when the report must be completed by the instructions of the judge what may lead to dispensable dragging of the process. On the other side there are no statement concerning the interrogation of the expert at the Slovak court. The judges must improvise through the procedural decisions or apply the statements concerning the interrogation of the witness per analogiam.

Both of the regulation contains several advantages. By comparing the regulations and its consequences in the practise would be possible to improve both regulations, simplify and accelerate the process and reach faster the justice for the parties.

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