



The Report

STUDY ABOUT THE COURT EXPERTISE IN MONTENEGRO

Supported by



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I Introduction

Civic Alliance put the special focus on monitoring of work of courts in its Strategic Plan for 2012-2013. Previous reports of CA can be found at www.gamn.org and www.yihr.me

More detailed analysis of work of judicial experts has been identified through our monitoring of work of courts. For development of this study, CA has been supported by the Embassy of Kingdom of Norway in Belgrade. In our work, we use techniques of researching at the terrain (monitoring of courts), press clipping, legal analysis, interviews, analysis of official reports of public institutions and NGO sector.

The Report prepared Sinisa Bjekovic, legal consultant of CA, Zoran Vujicic, Coordinator of the rule of law program, and Milan Radovic, Coordinator of human rights program in CA, and ten monitors of CA who visited basic courts every day within the period of researching and monitored trials, where experts presented evidence.

Information delivered in the report have been collected from 01 August until 30 November 2012.

CA is grateful to all persons who participated in researching and gave their contribution to solving of problems in this area. In the following period, we will monitor all activities in this area. We hope that the study will be useful to professional public and public interested in this topic.

II About the expertise

In terms of terminology expertise is evidence prescribed by all applicable procedural laws. It is basically finding out the legally relevant facts over individuals, experts, who have professional skills and knowledge which the court or other acting body does not have (psychiatrists, pathologists, construction, electrical, mechanical engineers, economists, etc.). Judicial expert is a qualified person who fulfills the formal and essential requirements for dealing with this responsible job. The expert is the associate of court and judge, who largely assists the court to determine the truth, that is, to determine the specific and certain facts, with his expert findings and opinion, which results in opening and concluding the discussion. The course and outcome of judicial or extra judicial proceeding greatly depends of the quality and comprehensiveness of the findings and opinions of the expert. For that reason, expert receives the task that should be performed in accordance with the available documentation, but also the best professional knowledge and moral principles. In addition to skills, expert should be able to turn the material which is the subject of expertise into the report with findings and opinion and thus assist the court and the judge, and the parties in a dispute, and present the material of expertise fairly, professionally, in a clear and reasonable manner.¹

The main legal act regulating the position of experts in Montenegro is the Law on Judicial Experts ("Official Gazette of Republic of Montenegro" no.79/04). The essence of legislative intervention in this area was, as judicial experts themselves pointed out, the introduction of more order in the profession which should provide high quality work of referent, highly moral and professional persons, whose findings should make court and court proceedings more efficient and of a better quality. The law provides that expertise can do the legal and physical persons.

III Material regulations related to court experts

In the normative structure, Law is divided into parts that are related to the general provisions, conditions for the exercise of expertise, the procedure of appointment and dismissal of experts, their rights and duties.

¹ M. Vidic, The role and task of experts and expertise, Association of judicial experts – Belgrade

The need for specific professional experts, courts of first instance submit to the Judicial Council of Montenegro. In terms of conditions that must be met by an individual, the Law provides these are general requirements for work in public bodies (that the person is a Montenegrin citizen; adult, medically fit to perform expert analysis, to have prescribed level of education; that a person has not been convicted for a criminal offense that renders him unfit to work in a state agency, and against whom no criminal proceedings for an offense for which the prosecution ex officio is initiated). In addition to these general requirements, the court expert can be a person who meets the following specific conditions:

- to have an appropriate university degree in a specific area of expertise;
- to have at least five years of professional experience;
- to possess professional knowledge and practical experience in a particular area of expertise.

Exceptionally, the expert may be a person who has at least a high school diploma, if there is lack of experts for specific areas. Professionalism and ability of practical use of knowledge, important for the expertise, a person proves by published vocational and scientific papers in the field they are applying for, and by the opinions and recommendations of courts and other public bodies, professional and other institutions that are introduced with these facts. Persons having the appropriate specialist or scientific positions are not obliged to submit mentioned evidence.

Requirements for the legal entity prescribe the registration into the Central Register of Companies in Montenegro, which is maintained by the Tax Administration (Ministry of Finance of Montenegro) and employment of expert who was appointed under this Law.

Appointment procedure is carried out by the Commission established by the Law, formed by the President of the Supreme Court of Montenegro, which consists of two judges, two members of the Association of Court Experts of Montenegro, and one representative of the Ministry of Justice. The Commission shall determine whether the candidates for experts fulfill the requirements. Control of professional knowledge and practical experience of candidates for a particular area of expertise perform at least three members of the Association of experts with scientific or specialized professions, designated by the competent authority determined by the Statute of the Association. If there are not enough of experts with professional and scientific skills for the specific area of expertise, the control may be carried out by experts with a high school diploma. After the control, Association of Court Experts submits to the Commission an opinion on qualifications of candidates for the exercise of expertise in an writing form. Manner of assessment of professional knowledge and practical experience of candidates, and the assessment of costs of the assessment shall be closely regulated by an act of the Association of Court Experts, approved by the Ministry of Justice, and the cost of testing of professional skills and practical experience covers the candidate.

Decision of the Commission on the appointment of an expert is final and an administrative dispute may be filed against it. The expert is appointed for a term of six years and may be re-appointed. The expert shall take an oath before the President of the Supreme Court or a judge designated by the President, not later than 15 days from the day of appointment.

An expert may be removed by the same Commission, after the proposal of the President of the court or a judge if:

- he/she requires it;
- it is determined that the conditions under which he/she was appointed did not exist, or have ceased to exist;
- he/she was sentenced to prison or was convicted for a crime that makes him unworthy for the expert;
- he/she was imposed the measure of prohibition of carrying out the activities for which he/she became the expert;
- capacity to practice has been taken or limited to him/her, based on a judicial decision;

- it has been defined by law that the expert lacks capacity for practice, in a manner prescribed by law;
- he/she irregularly or improperly performs delegated expertise.

An expert irregularly conducts the expertise if offends the court or other parties in the proceeding, or if in an unjustified manner:

- rejects to testify;
- does not respond to court invitations;
- does not end the expertise in terms prescribed by court;
- in other cases stipulated by law.

The expert improperly performs its job if delivers incomplete, ambiguous or contradictory findings. In relation to delegated duties, expert is required to comply with certain terms prescribed by the court. If there are objective reasons that prevent it, the expert is required to submit a written statement on these facts, with an explanation about the reasons for the delay, and no later than eight days before the expiration of the deadline set by the court. The court is authorized to establish a new deadline or to entrust the expertise to another expert.

When it comes to more complex case, the expert is required to submit a brief report on undertaken actions, every thirty days. An example would be in the cases so-called *complex expertise* when all previous findings and conclusions merge into a single Report on expertise, even if it comes to more expertizes of individual experts or even (which is more complex) when it comes to more *multi-disciplinary* expertizes, where each expert, in accordance with their vocational and professional knowledge, provides its views that should be integrated into a common - unique conclusion.²

The expert is required to preserve the confidentiality of data in cases assigned to it.

For conducted expertize, an expert has the right to reward for work and compensation of costs related to this work. The amount and method of payment of costs related to the work of experts is closely defined by the by-law passed by the Government of Montenegro, while the amount of reward for the expert shall be determined by the president of the court. Depending on the scope and complexity of the case, the Law determines the fees in comparison to the number of so-called points, which carry each act of expert. Therefore, expert is entitled to:

- consider the case - 3 points;
- prepare for and access to expert discussion, deliver or defense of findings before the court - 5 points;
- access to debate which does not take place - 2 points;
- work on the terrain - 2 points / per hour;
- draft findings and opinions - 2 points / per hour.

In particularly complex cases, amount of the reward may increase for up to 100%, for the work at night, from 22 to 06 hours, on Sundays and holidays, amount of the reward for the work on the terrain rises by 50%. To work under extremely bad weather conditions on the open space and similar, the amount of reward for the work on the terrain increases by 100%. Amount of reward for expertize to the legal person, public body, scientific and technical institutions, shall be determined in accordance with the provisions of this law, if they did not conclude specific contract.

Regulation on compensation of costs in court proceedings ("Official Gazette of the Republic Montenegro", no. 66/05) prescribes the amount and the manner of payment of expenses to witnesses, experts, interpreters, professionals and other persons, under the conditions laid down in the Code of Criminal Proceeding.

Travel costs under this Regulation include reimbursement for transportation with means for public

² M. Vidic, Ibid

transportation and expenses for arrival from the place of residence, or residence to the place where the hearing takes place, expertize or any other action, and for the return in the residence place. The expert has the right to compensation of costs for meals (per diem) and lodging, if ordered by the court had to spend the day out of their place of residence or temporary residence more than eight hours, including the time needed for arrival to a place where it needs to conduct expertize or provide expert advice and for the return to the residence place or temporary residence.

Compensation for the lost wage for providing expertise or expert opinion is entitled to: an employee, a farmer and the other person receiving wage. Employee is entitled to compensation for the lost earnings in the amount of salary he earned in the month when he performed his duty before the court, in proportion to the absence from work.

Experts are obliged to submit a request for compensation of costs or payment of the reward immediately upon the completion of expert analysis, interpretation, or explanation. The request for compensation of travel costs, officials submit within the time provided by the regulations on travel costs for official travel. Public body, company, institution or other persons who have right to compensation of costs for expertize, shall submit an application within 30 days from the date of conducted expertize. A company, institutions or other legal entities referred to in this Article, and persons who have right to compensation of costs are obliged submit the application and the evidence on their expenditures.

The process of verification of professionalism and practical skills of experts shall be perform according to the Rules adopted by the Association of Court Experts of Montenegro on its session that took place on 23 May 2006.³ Verification is done by a commission appointed by the Executive Board of Association of Court Experts of Montenegro. Subject of verification are ability of professional preparation, presentation and defense of findings and opinions, knowledge on regulations which define the process of expertize, knowledge of the acts of the Association of Court Experts of Montenegro. The assessment of knowledge is composed of the written and oral examination. The written part consists of developing at least five findings and opinions determined by the Commission. The Commission will review findings and opinions and will introduce the candidate with the success he/she demonstrated in written test. Before the beginning of the oral testing, candidate receives results of the written test. The candidate whose findings and opinions are not graded as "satisfactory" is not entitled to access to an oral exam.

Oral test is public and takes place before all the members of the Commission. The manner of oral test establishes the Commission. After the completion of the oral part of assessment, the Commission drafts the opinion on qualifications of candidate for doing expertize. President of the Commission informs the candidate publicly, in the presence of all the members of the Commission, about his opinion, and if the candidate is absent, he/she will be informed by the written notice. The record about the course of testing shall be kept.

The Commission delivers the opinion to the Executive Board of the Association of Court Experts of Montenegro and the Commission for appointment and dismissal of court experts. Candidate, whom the Commission determined that it had no professional skills and practical experience for the expertize, may require re-assessment of knowledge six months from the date of assessment.

³Rules about the manner of control of professional knowledge and practical experiences of candidates for the court expert

IV Procedural position of experts and their role in court proceeding

Procedural position of experts in court proceedings is defined by the procedural laws. Given the importance of two key procedural laws, the Code on Criminal Procedure and the Code on Civil Procedure, and the fact that they have been subsidiary implemented to other court (and sometimes quasi-judicial proceedings), we will mention here only the provisions of these two laws, provisions that are universal and common to all types of expertise.

Article 136 of the Code on Criminal Procedure (“Official Gazette of the Republic Montenegro”, no.57/09) says that expertize shall be ordered when, with a view to determine or assess a relevant fact, it is necessary to obtain findings and the opinion of a person who possesses necessary expertise. Expertize shall be ordered by a written order of the authority conducting the procedure and it shall contain the following: the task and scope of expertize deadline for submitting the findings in written form and designation of the person to carry out expertize that is enrolled in the Register of Court Experts. The order shall be delivered to the parties as well. If a specialized institution exists for a certain type of expertize or expertize may be performed by public authority, such expertize, particularly complex ones, shall as a rule be assigned to such an institution, i.e. authority. The institution or the authority shall appoint one or more experts specialized in the appropriate field who shall deliver expertize. When the authority conducting the procedure appoints an expert witness, the authority shall, as a rule, appoint one expert and if the expertize is a complex one-two or more experts. In cases of certain expertize, when no expert have been appointed by the court or all experts for a particular field are prevented from conducting the expertise within proper deadline, expertize may be conducted by a person having permanent or temporary residence in another state or a person who is not enrolled in the Register. Experts shall obey the summons and present their findings in written form and opinion within a term determined in the order. Upon a motion of an expert the term determined in the order may be prolonged if justifiable reasons exist. If a duly summoned experts fail to appear and do not justify their absence, or if they refuse to perform expertize or offend the authority conducting the proceedings or other participants in the proceedings or if they fail to present theirs findings and opinion within the term determined in the order, they may be fined in an amount not exceeding 1.000 EUR while the specialized institution or another legal entity may be fined in an amount not exceeding 5.000 EUR. In the case of an unjustifiable absence the expert may be brought by force. In the preliminary investigation and investigation, the penalties shall be imposed by the court at the proposal of the State Prosecutor. The panel shall decide on the appeal against the ruling ordering a fine.

According to Article 139 of the Code, persons who may not testify as witnesses in line with Article 108⁴ of the present Code or persons exempted from the duty to testify within the meaning of Article 109⁵ of the present Code may not be appointed an expert; neither may a person against whom the criminal offence was committed. If such a person is appointed, the court’s decision may not be based on his/her findings or opinion. Persons who are employed by the injured party or the accused may not be appointed an expert, or if the injured party or the accused are employed by the expert or if the expert is together with them or with some of them employed by other employer. As a rule, a person heard as a witness shall not be appointed an expert. When an interlocutory appeal is allowed against the ruling rejecting the petition for the recusation of

⁴ Criminal Procedure Code: persons who would by giving testimony violate the duty of keeping the data secret within the meaning of regulations prescribing data secrecy, until the competent authority releases them from that duty; defense attorneys may not testify with regard to information accused persons have confided to them in their capacity as defense attorneys; persons who would by giving testimony violate the duty of keeping a professional secret (religious confessors, attorneys –at-law, medical professionals and other health system employees, journalists as well as other persons) unless they are relieved from this duty by a special regulation or statement of a person who benefits from the secret keeping ; minors who, taking into consideration their age and mental development , are not capable to comprehend the importance of the right that they are not obliged to testify.

⁵ The accused persons’ spouses and their extra-marital partners; accused persons direct blood relatives, collateral blood relatives up to the third degree as well as their relatives by marriage up to the second ‘degree; accused persons’ adopted children or adoptive parents.

an expert within the meaning of Article 41, paragraph 4 of the present Code, this appeal shall stay the giving of the forensic examination if there is no risk of delay.

According to Article 140 of the Code, before the commencement of the forensic examination, experts shall be asked to thoroughly examine the object of their examination, to indicate accurately everything they notice and discover and to present their opinion without bias and in accordance with the rules of the science or skills. They shall be especially cautioned that giving a false expert witness opinion testimony constitutes a criminal offence. The authority conducting the procedure shall make sure that through forensic examination all the relevant facts are determined and made clear, and for that purpose shows to expert witnesses the object to be examined, asks them questions and where appropriate, requires clarifications on the given findings and opinion. Expert may receive explanations and may be permitted to inspect the files as well. Expert may propose that some evidence be presented or objects and information be obtained which are of relevance for giving findings and opinions. If present at the crime scene investigation, reconstruction or other investigative action, expert witnesses may propose the clarification of certain circumstances or that person who is testifying be asked certain questions.

Expert witnesses shall examine the objects of the forensic examination in the presence of the authority conducting the procedure as well as the court reporter, unless lengthy examinations are necessary for the forensic examination or if the examinations are carried out in a specialized institution or public authority, or if this is required by moral considerations. If it is necessary for the purposes of performing forensic examination to carry out analysis of some substance, if possible, only part of this substance shall be made available to the expert witness while the rest shall be secured in a necessary quantity in case further analyses are needed. According to provision of Article 142 of the Code, the findings and opinion of the expert witness shall be immediately entered into the record.

If the forensic examination is assigned to a specialized institution or public authority, the authority conducting the procedure shall be admonished that persons who are not specialized in the appropriate field or persons referred to in Articles 139 and 148 of the present Code that may be recused from forensic examination or within the meaning of Article 43 of the present Code may not participate in performing forensic examination and shall be subsequently warned about the consequences of giving false findings and opinions as well. The specialized institution or public authority shall deliver the written expert findings and opinion signed by the persons who made the forensic examination. The parties may request from the head of specialized institution or public authority to give them the names of the experts who will provide the forensic examination.

The provisions of Article 140, shall not apply when performance of forensic examination is assigned to a specialized institution or public authority. The authority conducting the procedure may request explanations regarding the presented expert findings and opinion from the specialized institution or public authority.

The record on the forensic examination or the written expert findings and opinion shall state who performed the examination as well as the occupation, educational background and expertise of the expert witness. When the forensic examination is performed in the absence of the parties, they shall be notified that forensic examination was performed and that they may inspect the record on the forensic examination and the written expert findings and opinion.

If several expert witnesses are appointed to carry out the examination, and data in their findings do not correspond on essential points, or if their findings are ambiguous, incomplete or contradictory internally or with the investigated circumstances, and if these anomalies cannot be removed by a re-examination of the experts, a repeated forensic examination shall be conducted by other expert witnesses. If the opinion of the expert is contradictory or inconsistent, or if grounded suspicion arises that the opinion is inaccurate and these deficiencies or suspicion may not be removed by a re-examination of the expert witness, the opinion of other expert witness shall be requested or a new examination shall be conducted by other expert.

Provision of Article 243 of Law on Civil Procedure ("Official Gazette of the Republic Montenegro", no. 22/04, 28/05, 76/06) prescribes that the court may decide to hear experts, when professional knowledge, which the

court does not have, is necessary for the establishment or clarification of certain facts. The party proposing the expert evaluation shall be obliged to indicate in its proposal the subject and scope of the expert evaluation, as well as to propose the person who shall provide the expertise. The adverse party shall give its opinion on the proposed expert, subject and scope of the expert evaluation. If the parties fail to reach an agreement on the person to be appointed as the expert or on the subject and scope of the expert assessment, the court shall make decision on these issues. The court may, regardless of the agreement between parties, designate other expert if it finds the examination a complex one.

One expert shall perform expert evaluation but in case that the court finds the examination a complex one, it can designate two or more expert witnesses. Experts shall in the first place be appointed from among the certified court experts for certain kind of expert evaluation. More complex expert evaluation shall be entrusted, in the first place, to professional institutions such as hospital, chemical laboratory, university, and the like. If there are institutions for certain kinds of expert evaluation (counterfeit money, handwriting, typewriting and the similar), such expert evaluations shall be, first of all, entrusted to such institutions.

Experts shall be obliged to respond to the court summons and state their finding and opinion. The court shall exempt an expert from the duty of providing expert evaluation, at his request, for the reasons for which a witness may refuse to testify or give an answer to certain questions.⁶ The court may also exempt an expert from the duty of providing expert evaluation, at his request, out of other justified reasons. Exemption from the duty of expert evaluation may also be requested by an authorized employee of the body or organization where the expert is employed. An expert may be exempted for the same reasons for which a judge may be exempted,⁷ but exceptionally a person who has already testified as witness may be taken as an expert. A party shall be obliged to file the request for exemption of an expert as soon as he learns that there is a reason for exemption and before the beginning of presentation of evidence by the means of expert evaluation at the latest. A party, in his request for exemption, shall be obliged to state the circumstances on which he bases the request for exemption. The court shall decide on request for exemption. No interlocutory appeal shall be allowed against the decision approving the exemption of an expert and no interlocutory appeal shall be allowed against the decision rejecting the exemption of an expert. If the party has learned about the reason for exemption after the performance of expert evaluation and objects the expert evaluation for that reason, the court shall act as if the request for exemption has been filed prior to the expert evaluation.

An expert shall be always summoned to the main hearing. The transcript of the decision which defines the expertise shall be delivered to the expert, together with the summons for the main hearing. In the summons,

⁶ Law on Civil Procedure; Article 233 A witness may refuse to testify on:

1) Issues divulged to him by a party, in his capacity of a party's agent; 2) Issues confessed to him by a party or another person, in his capacity of a religious confessor; 3) Facts learnt by the witness, in his capacity as an attorney at law or a doctor, or facts learnt during the exercise of some other occupation or business, if there is an obligation to keep as secret the matters learnt in the exercise of that occupation or business; The court shall instruct those persons that they may refuse to testify.

According to Article 234 a witness may refuse to answer particular questions if such an answer would cause danger of criminal prosecution to the witness, his/her blood relatives in the direct line up to any degree, and in the lateral line up to and including the third degree, his marital partner or non-marital or in-laws up to and including the second degree even if the marriage has ended, as well as his guardian, adoptive parent or adopted child. The court shall inform the witness that may refuse to answer the addressed question.

⁷ Law on Civil Procedure; Article 69: A judge cannot adjudicate the case if:

1) He/she is the party, legal representative, authorized agent, co-agent, co-debtor, regressive debtor, or has taken or was called to take the stand as a witness or court expert; 2) The party, legal representative or authorized agent is his/her blood relative in direct line to any degree or in the lateral line up to fourth degree, or if they are spouses or relatives up to second degree, regardless of whether the marriage has been terminated or not; 3) He/she is the guardian, adoptive parent or adopted child of a party, party's legal representative or an agent; 4) He/she has participated in reaching the judgment of the inferior instance court or another organ in the same case or has participated in alternative disputes resolution; 5) He/she has participated in reaching the judicial settlement and party request for setting aside; 6) He/she is holder and the member of holding company; 7) There are other circumstances that call into question his/her impartiality.

the court shall advise the expert that he must present his opinion conscientiously and in accordance with the rules of science and profession and inform him of the consequences of the failure to deliver the findings and opinion within the set deadline or to attend the hearing, as well as of the right to a fee and reimbursement of costs. Unless the court determines otherwise, the expert shall always present his findings and opinion in writing before the hearing. The expert must always explain his opinion.

If the expert fails to state findings and opinion within the set deadline, the court shall, following the expiration of the deadline left to the parties to state their opinion on this issue, assign another expert. If the expert submits unclear and incomplete findings or opinion, contradictory to themselves or to presented evidence, the court shall direct the expert to supplement them, or correct them and set the deadline for re-submission of findings and opinion. If the expert fails to submit complete and understandable findings and opinion even upon the court direction, the court shall, after having heard the parties' opinion, assign another expert.

The court shall deliver findings and opinion in writing of the expert to the parties at least eight days prior to the main hearing. The main hearing shall be held even if the expert fails to appear at the hearing. As an exception to paragraph 1 of this Article, should the court find the presence of the expert at the hearing essential for the clarification or supplementation of his findings and opinion, it may, on the motion of a party, adjourn the hearing and set a new one to which the expert shall be resummoned. The court shall allow the expert to examine the files as well as to question parties and other experts with regard to the subject of the expert evaluation.

If several expert witnesses are designated to testify, they may submit their shared findings and opinions if they agree in the findings and opinions. If his or her findings and opinions are not in agreement, each expert shall submit his own report separately. If the expert opinions substantially differ, or if their opinion are unclear, incomplete and in contradiction with itself, or with the adduced circumstances, and those faults cannot be removed by repeated hearing of the expert witnesses, the expert examination shall be repeated by the same or other experts. If contradictions or faults are found in the opinion of several expert witnesses, or a justifiable suspicion in the regularity of the given opinion, and the suspicion and faults cannot be removed by repeated hearing of the expert witnesses, the opinions of other experts shall be sought.

According to provision of Article 182 of Law on Civil Procedure, the court shall fine an expert with the amount of 500 Euro when he fails to deliver findings and opinions within the set deadline or unjustifiably fails to appear at the hearing, although duly summoned. The court shall impose the same fine for the expert who refuses to perform expert evaluation without justified reason. The court shall, at the request of the party, order the expert to reimburse the costs incurred by his/her failure to submit findings and opinions, unjustified absence or unjustified refusal to perform expert evaluation.

V The state in the area of expertise

In interview for daily 'Vijesti', on 4 August 2012, Prof. Dr. Dragana Čukić specialist for judicial medicine and the expert of judicial and medical profession said that the profession of expert have a lot of people in Montenegro who - as she said - "have no knowledge or moral quality to be where they are ... If we want to access to the EU, and it is desire of all of us, expertise should be entrusted only to experts who have the knowledge and moral qualities." Dr. Čukić is also one of the founders of the Association of court experts of Montenegro and the President of that body in two mandates.

She claims that some experts have been very well rewarded, considering their education and the finding they offer. On the other hand, professors and specialists in judicial medicine in Montenegro are, as she said, absolutely degraded when it comes to fees for conducted expertise. Thus, according to Dr. Čukić it cannot be equally treated boundary measuring and the price of funeral equipment with expertise at autopsy for murder, which is one of the reasons for the new legislative intervention that should determine the methodology for evaluating expert services, on a new basis to.

"If the expert does not stand firmly on his/her feet, and, if consciously, intentionally or unintentionally manipulates the truth, gives inaccurate or false testimony, for all sorts of reasons – he may be criminally liable, and not to mention his reputation in society and other consequences - that he can be removed from the list of experts and similar. Montenegro is a small country and generally is known who is who in this region", said Dr. Čukić.

In an article in daily newspaper DAN, published on 24 September 2012, under the title "Obstructions delaying litigation", the party in the proceeding directly accused financial expert for obstructing the case:

"With such a behavior, expert not only prevents me to exercise the right in this dispute, but causes enormous court costs I am obliged to pay to experts."

She also stressed she was surprised that the expert only at the end of expertise, when she should more precisely provide her opinion related to analysis and findings, stated she could not be engaged anymore in the proceeding due to enormous commitments, even though she was fined by President of the Court.

Quotations from these interviews were not randomly taken in this report. Expertise as a procedural action, the role of the expert and the problems that can occur in this regard in the work of courts, have been singled out as one of the major obstacles to the efficient and timely keeping of court proceedings in cases which need expertise. This is especially related to cases that require highly professional expertise and specialized knowledge in certain areas. Also, inertia of an expert in terms of respect of deadlines has also been defined as the specific problem.⁸

In respect of legislative intervention, considering that requirements of profession and expectations of citizens are matching, we believe that it is important to implement appropriate action to determine the status, remove barriers and strengthen the position of experts in the procedural and material and legal sense. During the trial monitoring it is possible to achieve "scanning, with the aim of insight into practical problems and the functioning of this important profession that is closely related to judiciary. The goal is not only to improve the efficiency of the judiciary itself, but also the availability of timely, efficient and qualitative justice and the trial, which is justified and on the Constitution and international law based expectation of the citizens of Montenegro, as well as of all those who seek justice before Montenegrin judiciary.

VI Perception of expertise in the procedural and organizational aspect

Understanding of the role of expert in court proceedings is certainly important for understanding of their role and importance in exercising justice. In order to evaluate the system as a whole, one-sided perception of any of the parties in the proceedings is not possible, or ad hoc solutions and change of conditions can be accessed according to the assessment of any single authority where the proceedings of accreditation / licensing are carried out, or experts are hired as professionals or the estimate of the ability to perform the tasks is carried out. For that reason, in this brief analysis, we opted for a multi-conceptual approach, on which bodies that participated in the selection expressed their standpoints - accreditation, those who engage experts by their acts, and those whose requirement for the exercise of an individual right mostly depends from findings and opinions of experts in certain profession.

The general impression is that the current system of licensing experts in normative sense satisfies criteria of objectivity, and in that sense there were no major objections on work of any of the bodies that carried out the procedure.

⁸ See the material of Civic Alliance "Monitoring of work of courts – Access to the court, equality, transparency, efficiency", 2011, page 4

When it comes to special-specific knowledge, or profession, there is an obvious discrepancy in the attitudes of the judiciary and what, as their vision offer representatives of Association of court experts.⁹ Namely, bearers of judiciary power in their discussions highlight the lack of highly-profiled professional expert in specific areas, for which have to be engaged professional institutions out of Montenegro with evidently higher costs of expertise than this would be the case if there is appropriate counterpart in Montenegro. Also, lacking is particularly emphasized in specific areas of Montenegro (especially at north) which brings the issue of rationality and efficiency of the judicial proceeding.

In contrast to this standpoint, the Association of experts was explicit on this issue and therefore we publish the answer ad litteram, with no editorial intervention:

"In Montenegro, as far as we are aware, we currently have court experts of all kind of expertise, so we have no need to hire experts from abroad."

The Association of experts believed there was less need for hiring professional assistance from abroad, and due to the lack of sophisticated equipment that had previously been the case. According to the current situation, technical and technology base and equipment for all types of expertise today exists in Montenegro, so there is no need for additional engagement of external effect.

In organizational terms, ongoing work on creation of conditions for improvement of functioning of Association of Experts of Montenegro is evident. It should be noted that Association received legal status in a two very important components of organizing experts: as part of the Commission that determines the conditions for appointment, and as the special expert body that is testing the knowledge and practical experience of each candidate.

Compared to the general criteria, it seems there are no points of contention. The expert should have the process ability, undisputed professionalism and high moral and human qualities. When this concerns legal entity, besides the obligation of registration in the Central Registry, it is necessary that it had engaged an expert appointed by the applicable law. Professional knowledge and practical experiences are in exclusive domain of scrutiny by the profession, or an appropriate body of the Association of Experts of Montenegro.

In relation to the rules of profession and the code of ethics, the Association of Experts of Montenegro announced the initiative for the adoption of new acts that would provide higher level of legal certainty and strengthening of professional ethics and responsibilities (adoption of the Rule of Procedure of the Court of Ethics) and strengthening of educational function through formation of the Committee for Education. In addition, following the examples from the region, the Association plans to initiate obligation of insurance of expert for liability for damages caused to third parties.

In attachment to the statement about the quality of experts in Montenegro, the Association pointed out they were not far behind the countries in the region, and in some areas they considered to be at the level of experts in the countries of the European Union, which is considered as the merit of the Association and its activities (eight scientific and professional meetings and publication of the scientific journal *Expertus Forensis*, which is publishing twice in a year).

It is interesting that different actors of judicial proceedings have certain objections to the lack of clear and appropriate criteria for the evaluation of expert services (courts, experts). Requirements of specific courts are providing a more precise instructions for uniform costs of expertise, which somewhat corresponds to the request of the Association of expert to define more clearly the level of complexity of the tasks and responsibilities of experts, as one of the key indicators of the value of the services rendered. In addition to restructuring the costs, the Association proposed that the value of the point that determines the value of the

⁹ Such conclusions were made after published conversations with presidents of six courts in Montenegro, and media reports and interviews with the President of association of court experts of Montenegro.

services associates with the earnings of bearers of judicial and constitutional and judicial functions, and not as it was previously for the value of the minimal wage in the state, established for the previous month.

VII Monitoring of trials

Conducting monitoring of trial in the two reporting periods (April-May 2012, October-November 2012), monitors of Civic Alliance found that in the first reporting period, out of 149 monitored trials, expert appeared in 97 cases. In the same period, out of 129 ordered expertizes, court experts did not at all or did not to act until monitored trial and submitted the findings and opinions in 43 cases.

In the second reporting period, in 273 monitored trials expert appeared in 41 cases. In relation to the omission of the trial, out of total of 11 cases when the expert failed to appear, 6 trials were delayed and in 4 cases hearing was held. When it comes to failure to appear at a hearing out of the observed 11 trials, the expert did not justify his failure to appear in five cases. Unlike the first period, in the second monitored period experts were much more efficient, so they filed findings and opinions after the order of a court in a timely manner in even 90.24% of cases. In these proceedings, the court or the parties have expressed their dissatisfaction with the expertise conducted in ten, out of 41 monitored trials.

Previous researches and monitoring of the work of courts that was conducted in 2011, indicated on a very high level of involvement of expertise in the dynamic of process, for which courts particularly emphasized the prolongation of development of opinions and findings of experts, and the lack of experts of specific professional profiles.¹⁰

VIII Media and experts

For the needs of this study, a questionnaire was conducted among journalists from the largest print media in Montenegro, who monitor trials for many years. On question: "In monitoring of trials, generally what are your experiences and views on experts", all of the respondents answered the same thing - that despite the large number of experts, only few of them were engaged. On question: "Were the trials you monitored, delayed due to the absence of experts even if invitations were regularly delivered," respondents answered that it happened, but rarely. Also, they were unanimous in assessment that judges never or almost never, in the trials they monitored, dismissed any expert and appointed the new one after poor or incomplete report.

We will mention two examples from the practice of journalists.

Example 1: "I am a witness that (constantly engaged) expert team of psychiatrists few days ago declared fully accountable and without affects in the critical moment a person charged for murder, even though the case files showed he was acquitted of the army because of mental instability, that he regularly visited psychiatrist and so on. I'm not saying it was impossible that the defendant at the time of the offense was completely sane, but for me, that was a surprising standpoint of expert, because often, the same team of experts, for some specific and much milder cases prescribes "significantly reduced mental capacity of the defendant."

Example 2: "An expert had a duty to determine whether it was automatic or half-automatic rifle. He made the finding, which anyone could do. When he arrive at the hearing and when was asked whether he had checked if any modification was done on the weapon, and whether he tried to make shoot from it so he

¹⁰ Civic Alliance, Monitoring of work of courts, 2011, page 44, you may view at the web page http://www.yihr.me/?page_id=225

could prove the claims in findings, he answered no, and that he only made the rifle readout. After having tried the ignition, it turned out that the first report was incorrect because the gun was subsequently amended."

IX Conclusions

- There is a realistic need and a plenty of space to regulate matters concerning the organization and procedural position of experts. There are different standpoints on certain issues, which imply the need for legislative and fundamental reforms in this area. It is unacceptable that different standpoints occur even in some elementary matters of fact, such as the question whether we have in Montenegro or have not all professional profiles that can meet the needs of quality and efficient judicial proceeding. On media statements if there were unreasonable delays in payment of compensation for the work of experts, it is impossible to get an answer.
- It is important to find solution for the effective control of work of experts and efficient measures for initiating the proceeding for their responsibility, which does not have example for the monitored period.
- It is important to draft an analysis of rejected findings of experts even in cases when it was noticed higher level of rejected findings, examine their work and initiate responsibility. It was especially indicated by journalists on cases of trials that were under large public attention, when findings on an expert were rejected few times (authors of the research know his name)
- The Law on Experts says that the expert may be dismissed before the commission that appoints them on the proposal of the President of the court or a judge, but that opportunity did not use Presidents of basic court this year, as well as judges, although in some cases they pronounced fines for experts who did not meet deadlines or whose reports were incomplete.
- In the second half of the year has been reduced unjustified absence or absence of experts generally at the trial on which they were regularly invited. The most likely reason is that the courts, in contrast to the previous practice, nowadays effectively punish lawyers and experts for unjustified absence from the hearing process.
- In addition to specialized research papers, there is a need for a comprehensive analysis on the impact of experts on the process and outcome of the trial. This would remove doubts whether experts obstruct court proceedings or contribute to its efficiency. It is evident that in this project have to be equally involved experts and decision makers on their engagement. Inputs of citizens and civic associations may, from their perceptions, some issues that remain neglected in the legal public.
- It is necessary to do some additional financial analysis and examine the possibility of impact of financial indicators in terms of improving working conditions for experts.
- Although there are claims that there is adequate technical equipment, most experts we interviewed referred to the lack of qualitative and tested equipment, which is elementary precondition for qualitative work on complex and complicated expertize.
- The parties, primarily in litigations, indicated that expert tariffs should be reviewed and adjusted to social and economic situation.

X Useful links

- www.gamn.org
- www.norveska.org.rs
- sudovi.me
- usvcg.me
- usvcg.me/fajlovi/cas.forenz.pdf