

EuroExpert e-bulletin

The last few months for EuroExpert have as usual been busy. Our General Assembly was hosted by Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V. (BVS) in Berlin for which we are very grateful. At the meeting we were delighted to welcome back to membership the Asociación Española de Peritos Tasadores Judiciales representing the interests of Spanish Experts. At a time when there is an increasing demand and changes taking place for experts and dispute resolvers their participation is most welcome as it adds a further valuable dimension to our work.

The opportunity to learn more about the role of experts is something that I am personally always grateful for. As part of our work the Secretary General, Bernhard Floter and I recently visited Milan to have discussions about EuroExpert and its work as well as to learn more about the role experts play. Hopefully we will see representation from Italy in the near future. Expanding those participating in EuroExpert as well as the opportunities it provides for our members is extremely important in the current environment. The EU itself has recently welcomed Croatia to its ranks so it is particularly pleasing to discover that there is an expert witness organisation there. In September they will hold their 3rd International Congress

of Expert Witness and the list of speakers seems most impressive. We wish them every success with it and hope to have the opportunity of participating there and welcoming them to EuroExpert.



As organisations grow so too does the need for standards and maintaining them. This increasing trend of regulation is being reflected in a number of the EU countries with constantly changing regulations for experts which are, we are told, to improve justice. It is not only in Europe that this trend has been seen and hopefully we can learn from experiences in other jurisdictions.

Recently, for example, there have been a number of high profile cases in the USA using expert witnesses and some of them have challenged the role of the expert and some will have an impact in the longer time. There have been changes in legislation such as in Florida where earlier in the year they have increased the test for admissibility of expert evidence stating that it will increase the quality of expert witnesses without impairing

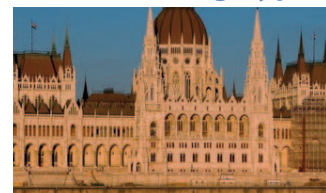
continued on **page 7**

Inside this issue

News from the UK **p2**



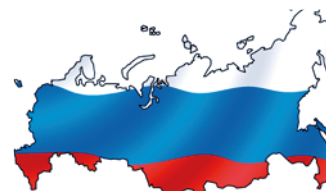
News from Hungary **p9**



Austrian Mediation **p4**



Experts in Russia **p6**



The e-Bulletin is published periodically. It provides useful information for those who are either acting as an expert, who use their services or are in charge of setting standards for experts. EuroExpert (EE) is a point of contact between national and European judicial and legal authorities, government departments, official and private bodies and other appropriate tribunals.

EuroExpert

The Organisation

EuroExpert (EE) is a membership organisation whose members are representing substantial bodies of Experts in their own country. Each organisation must demonstrate to EE that they have appropriate standards for Experts.

Philosophy

EuroExpert's philosophy is self-regulation by Experts and the establishment of agreed common professional standards in the best interests of society.



The Royal Courts of Justice - The High Court in London

Changes to Fees & Standards for Experts in England & Wales

News from the UK

In England and Wales the spotlight has recently been focused on expert evidence both on the quality of the evidence and the value it provides. There have been a number of consultations which have looked at different aspects – one relating to the fees paid for experts in publically funded cases. In this consultation it has been suggested that experts will receive a 20% reduction in the fees they receive which are in many cases already considerably lower than then private cases. The outcome of this consultation will be known later this year. A real concern if the cuts are implemented is that it will lead to a reduction in those with experience and appropriate qualifications who are willing to accept publically funded work. At the same time there is a consultation looking at the introduction of standards for Expert Witnesses in the Family Courts. Many of the Standards should not cause a problem for the properly qualified expert – the more interesting aspect

is how they will be enforced. The proposed standards are highlighted below.

The Standards

Standards for Expert Witnesses in Family Proceedings in England and Wales

Compliance with the standards (1.1-1.12 below) is expected from an expert witness in family proceedings in England and Wales, whatever their field of practice or country of origin.

The parties or their representatives should assure themselves of the expert's suitability by making appropriate enquiries and provide information to the court, to satisfy the judge that an expert demonstrates they can comply with the standards, prior to instruction in a case relating to children. The evidence required can be provided in a CV, which when appended to the expert's report is guaranteed by the statement of truth.

1.1 The expert's area of competence is appropriate to the issue(s) upon which the court has identified that an opinion is required, and relevant experience is evidenced in their CV.

1.2 The expert has been active in the area of work or practice, (as a practitioner or academic and subject to peer appraisal), has sufficient experience of the issues relevant to the instant case, and is familiar with the breadth of current practice or opinion.

1.3 The expert has working knowledge of the social, developmental, cultural norms and accepted legal principles applicable to the case presented at initial enquiry, and has the cultural competence skills to deal with the circumstances of the case.

1.4 The expert is up-to-date with Continuing Professional Development appropriate to their discipline and expertise, and is in continued engagement with accepted supervisory mechanisms relevant to their practice.

1.5 If the expert's current professional practice is regulated by a UK statutory body (See Appendix 1) they are in possession of a current licence to practise or equivalent.

1.6 If the expert's area of professional practice is not subject to statutory registration (e.g. child psychotherapy, systemic family therapy, mediation, and experts in exclusively academic appointments) the expert would be expected to demonstrate appropriate qualifications and/or registration with a relevant professional body on a case by case basis. Registering bodies usually provide a code of conduct and professional standards and may be accredited by the Professional Standards Authority for Health and

Social Care (See Appendix 2). If the expertise is academic in nature (eg regarding evidence of cultural influences) then no statutory registration is required (even if this includes direct contact or interviews with individuals) but consideration should be given to appropriate professional accountability.

1.7 The expert is compliant with any necessary safeguarding requirements, information security expectations, and carries professional indemnity.

1.8 If the expert's current professional practice is outside the UK they can demonstrate that they are compliant with the FJC 'Guidelines for the

instruction of medical experts from overseas in family cases'.

1.9 The expert has undertaken appropriate training, updating or quality assurance activity relevant to the role of expert in the family courts in England and Wales within the last year.

1.10 The expert has a working knowledge of, and complies with, the requirements of Practice Directions relevant to providing reports for and giving evidence to the family courts in England and Wales. This includes compliance with the requirement to identify where their opinion on the instant case lies in relation to other accepted mainstream views and the overall spectrum of

opinion in the UK.

Expectations in relation to experts' fees

1.11 The expert should state their hourly rate in advance of agreeing to accept instruction, and give an estimate of the number of hours the report is likely to take. This will assist the legal representative to apply expeditiously to the Legal Aid Agency if prior authority is to be sought in a publicly funded case.

Feedback for expert witnesses in the family justice system

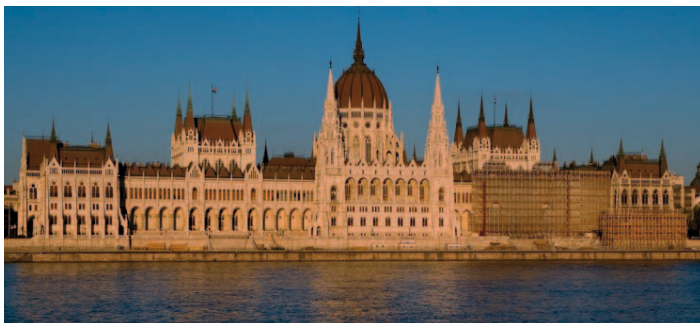
1.12 The expert should seek appropriate feedback from the legal representative regarding the outcome of the case,

and the value and weight placed on the expert's own evidence. Where a party is not represented, the expert should seek feedback on the outcome of the case, and consider seeking other feedback bearing in mind that a litigant in person is likely to have limited experience of court processes. This is an essential part of the overall quality assurance of expert witness practice, for individual professional reflection and development.

Nicola Cohen

Chief Executive

The Academy of Experts



Hungarian Parliament Building - Budapest

News from Hungary

The Act XXXIV of 2013 has established the Performance Certificating Expert Organisation.

This new organisation – similarly to the Arbitration Court – shall be connected to the Hungarian Chamber of Industry and Commerce, and can be taken before or instead of ordinary court proceedings. The resolutions of this organ shall be immediately executable.

The aim is to reduce the volume of the chain debts in the construction industry and to prevent new debt chains. Usually a new chain starts when a Client does not give out the Certificate of Performance to the Contractor and does not pay, this can effect deeply also the subcontractors and suppliers, eventually incorrectly. The Parties can take the new Organisation in the process of the work yet, while an ordinary court proceeding can start later only and can take one or more years. The expert's committee must complete its report within 60 days.

The law – due to the action of our Court Expert's Chamber – declares, that this organisation is obliged to involve, to work with registered court experts only and exclusively, - of course, with the proper constructional competence. – This is a kind of acknowledgement for us, and can create a supplementary market demand for the services of our expert members.

dr. Turán, Zsolt

President

Budapest Chamber of
Court Experts



The Supreme Court of Justice - Austria

Progress in Austria with mediation for proceedings pending in court

News from Austria

Mediation, which is a tool used by litigating parties in an attempt to solve their conflicts on a voluntary basis with the help of a mediator, is continuously gaining in importance in Austria for settling conflicts both in court and out of court. For many years private dispute resolution procedures have been used, for example, by the Chamber of Medical Doctors in connection with patient disputes, or insurance claims, as well as in many other areas.

Larger municipalities that have staff qualified for and trained in legislation on rents and leases, which is a socially sensitive area, will schedule proceedings at the administrative authorities before going to court, whenever important

issues are at stake. It is the task of this mediation agency to take a decision on the case in hand. It is only when one of the parties involved does not accept the decision that the matter will be taken to court.

As early as 2004 the Civil-Law Mediation Act was adopted which was intended to promote the recognition and application of mediation. An Advisory Board for Mediation was set up with the Federal Ministry of Justice as well as a List of Mediators, where persons can become registered who have acquired the necessary qualifications. These "registered mediators" are under the pledge of secrecy and confidentiality, must pursue their continuous

professional development and must have third-party liability insurance.

On the basis of the EU Mediation Directive, Austria adopted an EU mediation law for cross-border disputes on 1 May 2005, which went into force on 1 May 2011.

The website can be accessed on the Internet and comprises:

- ☐ the List of Mediators as well as
- ☐ the List of Training Facilities and Courses.

Austria thus has a generally accessible electronic register of its "registered mediators" who

have obtained specific training, as well as a list of basic and further training options.

Mediation has already made its way into Austria's laws on court procedures: the option is available in custody proceedings (§ 107 (3) item 2 of the Non-Contentious Proceedings Act); the Code of Criminal Procedure lists the right of registered mediators to refuse an assignment (§ 158 (1) item 3); § 320, item 4 of the Code of Civil Procedure even provides for a ban on interrogation. According to § 433a of the Code of Civil Procedure a court settlement can be signed at any local court covering the content of the written agreement reached during the mediation procedure in a civil-law matter. Pursuant to § 204 (1) of the Code of Criminal Procedure courts are required – in the course of discussing a possible settlement – to refer to institutions that are suited to reach a consensual solution of conflicts, whenever this appears useful.

Project for Mediation in Commercial Cases

In June 2008 the Commercial Court Vienna launched a project for mediation in commercial cases in order to offer to litigants also this form of conflict solution, as well as

<http://www.mediatorenliste.justiz.gv.at/mediatoren/mediatorenliste.nsf/docs/home>

to possibly ease the courts' work load. In the course of the project, the mediation option is offered to parties in suitable cases. Mediation is meaningful whenever the litigating companies continue to have business contacts, in spite of the pending court proceedings, and there is readiness and interest on both sides to settle the conflict.

Whenever the parties and – what is essential – their counsels agree, a mediator is called in to attend a hearing where he/she will explain to the litigants, free of charge, the nature and course of mediation proceedings.

It is then at the full discretion of the parties whether or not they opt for mediation. The choice of mediator as well as reaching agreement lies solely with the parties. It is important for the mediator to be available at short notice, as the time factor is

of major importance.

The qualifications of the mediator are decisive for any successful mediation work. In spring 2011, representatives of the mediators' associations founded the Association for Mediation in Proceedings Pending in Court (Verband für Mediation gerichtsanhängiger Verfahren / VMG). This association has its own list of mediators, who must satisfy strict requirements such as, for example, practical experience in mediation and knowledge of court proceedings. This list is also accessible on the Internet

As mediators, through their specific work, support the judiciary, the VMG has also become an extraordinary member of Austria's Central Association of General Sworn and Court Certified Experts (Hauptverband der allgemein beeideten und

List of VMG Mediators:

http://www.vmg.co.at/Liste_der_Mediatoren.php

gerichtlich zertifizierten Sachverständigen Österreichs).

In the overwhelming majority of cases, conducted in the course of the project at the Commercial Court Vienna, agreement between the parties has been the outcome of mediation. As a result of this success, similar projects have been launched at six further regional courts.

Outlook into the Future

Because of the positive results obtained with mediation, one can expect that the work load of the sometimes overtaxed courts may become less. It is regrettable, though, that there is still no standard, as yet, for civil-law adversary proceedings which makes it possible to suspend the proceedings or, at least, to halt them for the duration of mediation proceedings. While one can conclude from § 204 (1) of the Code of Civil Procedure that the legislator is prepared to recognize mediation proceedings during adversary proceedings, an express regulation in the sense of offering the possibility of suspending the litigation would be desirable. This option is also available, for example, when waiting for the outcome of a leading case.

In any event, the option

of mediation proceedings during court proceedings has been introduced to Austria and is being applied, in spite of all the problems that may arise in their course. Using mediation in support of legal dispute solution is not only in the interest of the parties concerned, it is also necessary to ease the work load of the courts, as they are confronted with increasingly complex facts in terms of content and legal issues. Mediation thus ranks next to adversary court proceedings as well as, of course, court efforts to settle cases. They constitute an additional meaningful alternative for conflict resolution, especially in commercial cases.



Matthias Rant

President of the Central Association of Court Experts

3rd International Congress of Expert Witness in the Republic of Croatia

September 27th -28th 2013

Four Points by Sheraton Panorama Zagreb

"The Role of the Expert Witness in Republic Croatia"

www.sudski-vjestaci.hr

Expert Remuneration

In 2010 a comprehensive survey of Experts' remuneration throughout Europe was conducted by EuroExpert. This is shortly to be updated but in the meantime Российская Палата Строительных Экспертов representing Russian experts has joined EuroExpert and completed the survey.

A short excerpt from the Russian response is shown below - the full survey is available on the EuroExpert website.

What is an Expert (definition)?

An expert is a person who has special professional knowledge in various fields of science, technology, art and so on. There are no formal criteria in Russia for experts and he does not need any permissions from the state (license, certificate) to act as an expert.

Are there prescribed requirements for the qualifications that an Expert must have?

NO

An expert must only have special professional knowledge in various fields of science, technology, art and so on. There are no formal criteria in Russia for experts and he does not need any permissions from the state (license, certificate) to act as an expert.

Are there prescribed requirements for the form and presentation of the Expert's report?

YES

The expert shall submit his report in writing.

The expert's report shall contain a detailed description of the carried out study, the conclusions he has arrived at as a result of it, and the answers to the questions raised by the court. If the expert establishes, when conducting the expert appraisal, certain circumstances of importance for the consideration and resolution of the case about which no questions were put to him, he shall have the right to include conclusions on these circumstances into his report.

Is there a legally prescribed scale of charges for Experts in your country:

Court Appointed Experts - NO

Experts appointed by Public Authorities - NO

Experts appointed by a Private Client - NO

Is there any limitation on the number of Experts in a case?

NO



continued from **page 1**

access to justice. The issue of the experts discipline is a worldwide one and again a new law in Florida has been passed relating to medical malpractice cases where it is now necessary for the medical expert to the same speciality as the physician who is being sued. This concept is being challenged and it will be interesting to see how it develops.

At the same time experts face increasing criticism in judgements, this is one way in which standards can be properly enforced. Again the USA a New York State Judge provided a compelling reminder of the serious ramifications for an expert failing to provide truthful testimony. During the process of testimony it was discovered with evidence from a hidden camera that the Expert had

at the very best exaggerated or even worst had lied. A mistrial was ordered and possible criminal proceedings against the expert are being considered. The judge asked a simple questions "How do I stop parties from putting people like this on the stand and causing the State to spend thousands and thousands of dollars trying a case and putting a lying witness on the stand?"

The simple answer is to ensure that proper standards are created for experts which are understood by experts and those using their services irrespective of their discipline and jurisdiction. This is one of the fundamental cornerstones of EuroExpert's work and we look forward to working with more experts to continue this.

Nicola Cohen
President
July 2013

HAPPY BIRTHDAY TO MICHAEL COHEN

EuroExpert sends its warmest congratulations to Michael Cohen on the occasion of his eightieth birthday.

Michael Cohen is Chairman Emeritus of The Academy of Experts, London, and was one of those responsible for the founding of EuroExpert.



In this European Expert organisation he has initiated a variety of standards. In particular The EuroExpert Code of Practice and the Association and Mediation standards which have become cornerstones in the international expert arena. People from around the world have appreciated him chairing EuroExpert's conferences and Symposiae.

As a former President of EuroExpert his ongoing contribution has been, and continues to be, greatly valued.

Members of EuroExpert



Austria

Hauptverband der
allgemein beeideten und
gerichtlich zertifizierten
Sachverständigen Österreichs

Czech Republic

Komora soudních znalců ČR,
o.s.

Germany

Bundesverband öffentlich
bestellter und vereidigter
sowie qualifizierter
Sachverständiger e.V.

Portugal

Associação Portuguesa dos
Avaliadores de Engenharia

Spain

Asociación Española
de Peritos Tasadores
Judiciales

United Kingdom

The Academy of Experts

Secretary General:

Bernhard Floter
+49 (0)221 9127710
secretary-general@euroexpert.org

Associate Members

Russia

Российская Палата
Строительных Экспертов

Switzerland

Swiss Chamber of Technical
and Scientific Forensic
Experts

President:

Nicola Cohen CAE
+44 (0)20 7430 0333
president@euroexpert.org

www.EuroExpert.org
For further information about the
e-bulletin or EuroExpert