



## EuroExpert e-bulletin

The last few months have continued to busy both for EuroExpert and the world of Dispute Resolution. Firstly I would like to begin by welcoming the **Swiss Chamber of Technical and Scientific Forensic Experts** as Associate Members of EuroExpert – I look forward to working with them in the coming year and learning more about the use of Experts in their jurisdiction.

It was a very great pleasure to attend and speak at the EuroExpert



Symposium last month which was held as part of the Construction and real estate: expertise and appraisal Conference in Prague. The Symposium was co-hosted by the Czech Chamber of Forensic Experts and the Russian Chamber of construction expert witnesses to whom we are extremely grateful.



The day in Prague focused on “The Use of Experts in Europe – Developing international Expert Competence.” It provided an excellent opportunity to learn more about how experts are used in different jurisdictions whether it is because of the differences between the common and civil law approaches or because there are additional opportunities.

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## 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.

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### Philosophy

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

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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.



The Federal Administrative Court of Germany in Leipzig

## Federal Administrative Court revises its judgement on the age limit for public certification

# News from Germany

On the 1st February 2012 the Federal Administrative Court of Germany decided that the age limit for the public certification of experts is inadmissible (Ref. 8C 24.11, 1st of February 2012) and revised its January 2011 judgment.

In two judgements dated 26th January 2011 (Ref. 8 C 45.09 and 8 C 46.09) the Federal Administrative Court – BVerwG – declared an age limit of 70 and 71 years old respectively for the public certification of experts (as set out in the Rules of Procedure for Experts of the Chambers of Industry and Commerce for Rhine Hesse and for Munich and Upper Bavaria) against which action was brought.

According to the reasons given for the decisions by the BVerwG, it had been proven that the capabilities of people declined from the age of 70. This was why a corresponding general age restriction for publicly certified experts was to be viewed as justified and did not represent illegal age discrimination. Any legislative

objective did not necessarily need to be of a socio-political nature according to the rulings of the European Court of Justice – ECJ.

Prof Dr Brenneis, associated with the BVS for some 20 years through his Electronics and IT working group, and his legal counsel Dr Braun were unwilling to accept the dismissal of the case against the rejection of extending the age limit for the public certification in the specialised areas of “Application of computer processing in accounting and data protection” and “Computing processing in the hotel business”, and successfully filed a constitutional complaint.

In a decision dated 24th October 2011 (Ref. 1 BvR 1103/11), the Federal Constitutional Court – BVerfG – took the opposite the view to that taken by the BVerwG that the ECJ also believed that non socio-political objectives could justify unequal treatment of professionals due to their age and complained that the case had not been

submitted to the ECJ for preliminary decision on this question. In the meantime the question had been clarified by a new decision of the ECJ in the “Prigge” case that excluded socio-political objectives that could be pursued by an unequal treatment of professionals according to their age.

According to the BVerwG, the desire to impose an age limit was not an objective of labour market or employment policy and was not therefore a legitimate objective within the meaning of Section 10 of the General Equality Act (AGG) which could be applied to the unequal treatment of elderly publicly certified experts. Any such maximum age limit under Section 8 AGG could be justified by special requirements placed on the professional work of an expert within the specialised areas of the plaintiff which only younger experts could satisfy.

Finally, there was no justification in accordance with Art. 2 (5) of the Equality Directive 2000/78/EC - which had not been incorporated in the AGG but was nevertheless to be applied - where unequal treatment due to age is admissible if required by public safety, the prevention of criminal acts or the protection of rights and freedoms of others, at least not in the areas of specialisation served by the plaintiff.

Wolfgang Jacobs

Chief Executive, BVS



**Mediation as a new method available under the law for resolving civil-law disputes out of court**

## Mediation in the Czech Republic

The Mediation Act in the Czech Republic came into force in September 2012. Why were legal experts so keen on establishing a formal statutory framework for mediation?

Mediation is a new method available under the law for resolving civil-law disputes out of court.

Mediation as an instrument for the efficient resolution of civil-law conflicts has been commonly practiced in our country for a number of years, but the majority of the Czech public (to the extent that it is at all aware of the existence of the institution) approaches mediation with misgivings and maybe even with a bit of contempt, due to

the fact that there existed until now no statutory framework for this conflict resolution method. Parties who nonetheless decided to settle their dispute outside the courts with the help of mediation found themselves confronted with the fact that their voluntary negotiations enjoyed no procedural protection under the law whatsoever; what is more, they could never be sure of their choice of mediator, in terms of whether the given mediator was really qualified and ready to take on professional responsibility for the role which they would have to play in the mediation process. These and other shortcomings are addressed by a newly

passed Mediation Act, which was promulgated in the Collection of Laws as act No. 202/2012 Coll.

### **The essence of mediation**

Mediation is a procedure which allows the parties to a conflict - whether they be legal entities or private individuals - to negotiate the terms on which they are willing to settle the conflict between them, drawing upon the assistance of a mediator. The mediator is an unbiased and independent person who oversees and guides the mediation procedure (but does not hand down any decision on the merits). It follows from the very

nature of mediation that the parties engage voluntarily in the process, and that they work of their own will towards a settlement of their conflict (under the guidance of the mediator). If they succeed, they attain a mutually acceptable solution which was not imposed on them from above. No powers of public authority are vested in the mediator, and the mediator does not 'stand in' for an arbitrator or judge, which is why they may not interfere with the contents of the mediated settlement or decide on its final shape. The duties of the mediator are primarily to give balanced direction to the mediation process, to make sure that the agreed rules of negotiation are being honoured, and to instil a feeling of safety and trust in the parties.

Compared to litigation, mediation is faster, cheaper, and more efficient, because it answers the true needs of the parties, de-escalates the atmosphere between them, helps overcome issues beyond the narrowly defined substance of the claim, and thus preserves the possibility of future cordial relations between the parties to the dispute. As a rule, the parties will be more inclined to honour a settlement agreement reached in a mediation procedure, as it was not imposed on them by an external arbiter. This is because in mediation,

conflicts are not resolved from a position in power, following the proposal of one party or the other, but settled based upon the common interests of the parties, which may notably differ from their original demands. Whereas the courts rule strictly based upon the relief sought in the complainant's statement of claim, the contents of a mediated settlement may be quite different – in a commercial dispute, say, the parties may eventually agree to engage in a new type of cooperation, or strike a barter deal, or render alternative performances in lieu of those which gave rise to their conflict, etc.

The benefits of mediation were soon apparent to many in the legal community, who also welcomed one of its side effects - namely, that it eases the workload of the courts with their congested dockets. This led to ideas to incorporate mediation into a statutory framework and give it a formalized legal shape. In Europe, this was put into practice by passing Directive No. 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain acts of mediation in civil and commercial matters, which required member states to transpose its contents by 21 May 2011. As usual, the Czech Republic passed the requisite law with some customary delay. On the other hand, the new Czech Mediation Act goes beyond the Directive, which is aimed primarily at cross-border conflicts, by also providing a framework for domestic disputes.

## How is mediation regulated by the new Mediation Act?

The new act stipulates formal principles for the mediation of civil-law disputes (in the sense of 'disputes not governed by criminal law') and government oversight over the same; it also ascribes important legal effects to the thus "formalized" mediation procedure (by way of an amendment of related laws and regulations). While the act does not forbid or rule out other

***“one must have a clean record, be college-educated, and pass a special mediators' exam”***

forms of mediation outside this framework, the special benefits and guarantees are afforded only to those mediations which are conducted under the Mediation Act.

Aside from cases in which the parties decide from their own free will to resolve their dispute in mediation, the Mediation Act also anticipates that a court may require the parties to a dispute to meet with a chartered mediator (in an initial meeting of up to three hours) in order to identify the options for an amicable out-of-court settlement, if the court deems this expedient and appropriate. In such a case, the parties must promptly agree on a specific mediator, or else the presiding judge will make the choice for them from the list of chartered mediators. If a party refuses to submit to such court-

ordered mediation for no good reason, the court may decide not to award them any compensation for their costs of proceedings. During on-going court-imposed mediation (lasting up to no more than three months), the judicial proceedings are suspended. What is more, the Mediation Act newly requires the courts to instruct the parties of the possibility to resolve their dispute in mediation, by stipulating explicitly that the presiding judge must inform the parties of the mediation option if this appears advisable with a view to the nature of the case.

## The Mediator

The central figure in the mediation procedure is without doubt the mediator. In "run-of-the-mill" mediation, anyone and everyone may assume this role if they are acceptable to the parties, without having to provide proof of their formal skills and qualifications. By contrast, statutory mediation must always be overseen by a chartered mediator; a list of chartered mediators is available at the Ministry of Justice (and at the Czech Bar Association, for those mediators who are also qualified attorneys). The afore-mentioned institutions also control the work of mediators, and may penalize them for a breach of their professional obligations. To become a chartered mediator, one must have a clean record, be college-educated (with a master's degree), and pass a special mediators' exam organized by the Ministry of Justice or the Czech Bar Association. Chartered mediators must always abide by the terms set out in the Mediation Act whenever they perform mediation procedures or similar procedures.

## Conflicts of Interest

Within the mediation process, the mediator acts as an independent person who is not involved in the parties' interests or invested in the outcome of the settlement. This provides the parties with the necessary security that the host of their talks will guide them through the process without bias and for the equal welfare of both. It is precisely this impartiality of the mediator on which the trustworthiness of mediation rests, and because of which the Mediation Act expressly requires the mediator to conduct the mediation process in the spirit of independence and impartiality. Moreover, under the law, the mediator must refuse to accept a given case or, as the case may be, prematurely terminate a mediation procedure if there is reason to doubt his lack of bias because of a conflict of interest or if the trust between the mediator and a party breaks down.

## Confidentiality

For the comfort of the negotiating parties, the mediator is also bound by a duty to preserve confidentiality regarding the facts which they learn in connection with the preparation and implementation of the mediation, regardless of whether they no longer continue mediation. The parties thus do not have to fear that any information which is being communicated among them during mediation may be abused.

The mediator is obliged to conduct the mediation in accordance with the law, in person, and with due professional care. An integral part of his performance will be the adherence to a special Code of Ethics which is currently being prepared (on the level of the Czech Bar Association).

## Lawyers as Mediators

Mediators who are attorneys-at-law have a special obligation under the Mediation Act with respect to the provision of legal services: they must not render legal services pursuant to other legal regulations (even if they were otherwise authorized to do so) with respect to a legal conflict in which they act (or previously acted) as mediator, or with respect to which they performed preparatory steps towards mediation. However, the Mediation Act concedes that expressing one's legal opinion during the mediation process on a matter which touches upon the conflict or upon individual issues related to it does not qualify as provision of legal services in this particular sense.

## The agreement to mediate

Under the law, mediation is considered initiated once the parties and the mediator have entered into a mediation agreement. Prior to this, however, the mediator must give instructions to the parties regarding his role in mediation, the purpose and principles of mediation, the effects of the mediation agreement and the mediated settlement, the options for terminating the mediation, the mediator's fees and the costs of mediation. We need to stress that parties who agree to initiate a mediation do not forfeit their right to take the dispute to court – and the mediator must inform the parties of this fact.

An important aspect in legal terms is the fact that limitation and preclusion periods are stayed after the initiation of mediation, as is the time period for exercising rights that have become the subject matter of pending mediation under the Mediation Act. This also applies if the mediation procedure

is conducted in another EU member state pursuant to the laws of that other country. This means that the parties experience no time pressure when negotiating, because they need not fear that they might forfeit rights because of their failure to file a timely statement of claim, or because the rights would expire if they are not exercised within a certain time period. If a chartered mediator's license to perform mediation procedures is suspended or cancelled during a given mediation, then the effects of initiating mediation are preserved (for a maximum period of three months) if the parties to the conflict are unaware of this fact.

If rights which are the subject matter of mediation are being transferred or assigned during mediation, then the effects of initiating mediation persist, and the party which transferred its rights to someone else must promptly notify the other party to the conflict.

## Personal meetings

Once the mediation procedure has been kicked off, its particular course is not explicitly regulated by the Mediation Act. Applicable theory and practice suggest that it consists of several distinct stages:

- Once the mediator has instructed the parties and entered into the mediation agreement with them, a first meeting will take place. It is important that the meetings be attended, on behalf of the parties, by those particular individuals who are familiar with the underlying issues, who have the competence to contemplate offered solutions and to make counter-offers, and who are truly authorized to make qualified decisions in consideration of their own interests. Legal counsel

of the parties may attend the mediation meetings in order to support their client with legal or debating expertise, but they are not privy to the covert interests of the parties whom they represent and are therefore not in a position to assess whether proposed or discussed solutions are in line with their client's true needs. Therefore, the mediator should make sure that the mediation process is not only being attended by the parties' legal representatives alone.

- At the outset of the mediation, the mediator makes sure that the parties have understood the principles of this institution, reminds them of the essence of his role and position within the mediation procedure, and agrees with them on fundamental procedural concepts – how to approach each other, the duration of meetings, the competencies of each party, the manner in which talks will be conducted, and so forth. This is followed by the first stage of the mediation process, which essentially consists of gathering information. Taking turns, the parties explain to the mediator in the presence of the respective other party their opinion regarding the dispute, and how they perceive it. It is, after all, highly likely that the mediator knows nothing, or next to nothing, of the conflict and its background. In the interest of keeping a level view and preserving their neutrality, many mediators make an effort to refrain from collecting specific information about the situation between the parties before the mediation process has begun, and the mediator thus calls upon the parties and motivates them to explain their own position, to

give a personal description of the conflict, and to express their own expectations or fears in connection with it.

- Upon summarizing the key points and the information communicated to him, the mediator prepares the ground for mutual communication between the parties. The idea behind this stage of the process is to gradually reveal the parties' individual interests and motives. The parties are being given the opportunity to understand each other and empathize with each other's needs. The mediator's task is to redefine and rephrase the situation in positive terms. The parties begin to listen to each other and to cooperate.

It may be the case that one of the parties feels the need, in the course of mediation, to communicate certain information to the mediator which it considers confidential or sensitive to such a degree that it does not wish its disclosure to the other party. The mediator has the right to conduct separate talks with the parties, known professionally as a 'caucus', as long as he or she offers the same option – closed talks – also to the other party, and provided that in the view of the mediator, incorporating such talks in the specific stage of proceedings makes sense and facilitates a mutually acceptable solution. Failing that, the mediator may refuse to enter caucus negotiations. In this regard, it is important to note that the mediator must not communicate any information received from one party in separate talks to the respective other party, unless the first party gives consent.

## Searching for a feasible solution

Once the parties have abandoned their combative stance and reached a point at which they are able and willing to develop an understanding for the respective opponent's standpoint, the mediation enters a new stage: that of searching for a solution, and discussing tentative proposals. At the end of this stage, one will already be able to define the outlines of the parties' general understanding as to how their conflict could be amicably resolved and settled.

In the final stage of the mediation, the parties work with the mediator to negotiate and bring into existence an agreement through which their dispute is being settled. Irrespective of the fact that the parties will have already reached a broadly conceived general understanding while searching for a solution, it is indispensable that the newly agreed rights and obligations of the parties be translated into precise and unambiguous terms – not only so that the mediated settlement conforms to the statutory requirements for a valid transaction, but also because the parties' diverging expectations as to how the preliminary solution should actually be implemented will often surface only during this stage in which the final mediated settlement is being negotiated. In such a case, the mediator will have to reiterate the parties' common interests and expectations, help the parties revise the identified solution, and assist them in finalizing the mediated settlement. However, the responsibility for the contents of that settlement always lies with the parties to the conflict, and with them alone.

## Early termination of the mediation

At any point during the mediation, either party may decide that they no longer wish to partake in the mediation; given the voluntary character of mediation, it need not specify any reason for such change of mind. If the party makes the respective announcement only vis-a-vis the chartered mediator, then the latter must deliver the pertinent notice to the other parties. The mediation ends upon notification of the mediator. Also, if it has become obvious that a particular mediation will not lead to the desired outcome in spite of the best efforts of the mediator and the parties, the parties and the mediator may agree on an early termination; the mediation then ends upon the delivery of a joint statement in which the parties concordantly represent their wish to terminate the mediation procedure; this statement is to be signed by the mediator.

Finally, mediators themselves are also entitled to abort an on-going mediation effort prematurely, though they may only do so for qualified reasons set out in the law or in the mediation agreement. According to the law, grounds for early termination are given, in particular, if there is reason to doubt the impartiality or independence of the mediator, or if the parties to the conflict have not met with the mediator for more than one year. The mediator may also terminate an on-going mediation process if the necessary trust between them and the parties (or one of the parties) has been broken, or if a party to the conflict failed to pay the agreed advance payment on the mediator's fee.

## Conclusion of the mediated settlement

Unless the mediation is brought to a premature end, it is considered complete upon the execution of the mediated settlement.

Within the framework of statutory mediation, the mediated settlement of the given conflict must be in writing and be executed by all parties to the conflict. Aside from the parties' signatures, mandatory contents of the mediated settlement comprise the date on

***“At any point ... either party may decide that they no longer wish to partake in the mediation ”***

which it was made (which is added by the mediator) and the mediator's signature by way of which he or she confirms that the mediated settlement originated from the preceding mediation. One may also obtain court approval for the mediated settlement by submitting it to the competent court, whereupon the court will decide (within 30 days from the settlement date) whether it approves the mediated settlement reached under the Mediation Act. The parties thus obtain a directly enforceable title for the event of a breach of obligations set out in the mediated settlement without having to go back to trial-stage proceedings for determining their respective rights and obligations.

## In what situations is mediation the appropriate choice?

Mediation is generally a suitable method for resolving all kind of civil conflicts including:

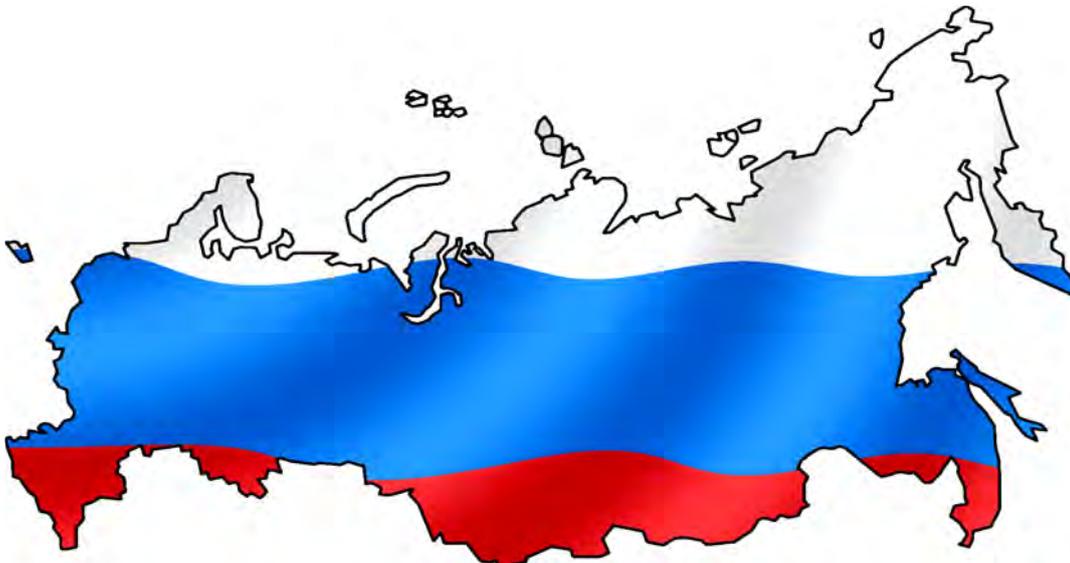
- business relations,
- between neighbours
- family members
- in employment

and serves those parties well who wish (or need) to set their dispute aside as fast as possible, and in particular if they are concerned about the losses which they may incur due to protracted court proceedings.

Global statistics report that more than two thirds of all conflicts which are resolved in mediation end with an amicable understanding between the parties.

However, mediation is not an option in those cases in which the subject matter in dispute are fundamental civil or constitutional rights, or if either party needs to obtain a decision imposed by a public authority.

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no right to divulge the data of the preliminary investigation, which have become known to him in connection with the participation in the criminal case in the capacity of an expert, if he was warned to this effect in advance in accordance with the procedure, established by the Code;

There is not this restriction in the Commercial Procedural Code.

An introduction to practice, procedures and problems  
(on the example of Commercial Procedure Code)

## The Use of Experts in Russia

### Court Appointed

In case any questions requiring special professional knowledge in various fields of science, technology, art, craftsmanship occur in a course of legal proceedings, the court appoint court expertise. The expertise may be committed to the state or non-governmental expert institution, some specific expert or several experts. In any case the expert is an individual person issuing expert opinion his expert advice on behalf of his name, and the expert organizations appointed by court perform simple administrative functions.

Procedure of appointment and order of the expertise

in civil, arbitration or criminal trial is governed by different laws (Commercial Procedure Code, Civil Procedure Code, Criminal Procedure Code), while the nature of the process remains the same.

Russia has a law in force named "**About the state court expertise**". This law also provides for non-governmental judicial experts. To conduct court expertise neither the expert nor his organization should have any special licenses or state permits. In fact, only "special knowledge" is required. The fact that this "special knowledge" is actually in place has to be defined by the court as the case may

be and there are no other forms of regulation with regard to court expertise.

According to the Civil Procedural Code an expert has no right to divulge information which has become known to him in connection with preparing his expert opinion, or to inform anyone about the results of the appraisal, with the exception of the court which has appointed him.

According to the Criminal Procedural Code an expert has

### The basic provisions of the Commercial Procedural Code concerning court expertise.

An expert in the court is a person with special knowledge in matters concerning the case under consideration, and appointed by the court to state an opinion in the instances and in the manner provided by this Code.

The expert appointed by the court is obliged to



Dr Serbey Zakharov

appear, when summoned, before the court, and to issue an objective opinion with regard to the questions posed.

Experts are entitled, by authority of the court, to access the case materials, to participate in court sessions, to pose questions to the persons participating in the case and witnesses, and to file motions for the presentation of additional materials.

Experts are entitled to refuse to state an opinion regarding the matters, exceeding the limits of their special knowledge, and if the presented materials are insufficient to state an opinion.

The expert is criminally liable for deliberately stating a false opinion. He is warned about it by the court and gives a recognizance in respect of the warning.

In the event of nonfulfilment of the court's demand to submit an expert opinion to the court within the term, fixed in the ruling on the appointment of a court expertise, in the absence of a reasoned statement from the expert or the state forensic-expert institution, stating the impossibility of conduction of a court expertise in due time for the reasons, indicated in the Code the court imposes a court fine on the head of the state forensic-expert institution or on the expert, guilty of such violations, in the manner and amount established the Code.

## **There is a special participant in the court proceedings – Specialist.**

A specialist in the court is a person with special knowledge in the corresponding field, providing consultations in the matters

concerning the case.

The person summoned by the court in the capacity of a specialist is obliged to appear before the court, answer the questions posed, provide oral consultations and clarifications.

Specialists are entitled, by authority of the court, to access the case materials, to participate in court sessions, to file motions for the presentation of additional materials.

Specialists are entitled to refuse to provide consultations in matters exceeding the limits of their knowledge and if the materials presented to them are insufficient to provide consultations.

In order to clarify the matters, arising

## ***“The Expert is criminally liable for deliberately stating a false opinion”***

in the course of the consideration of the case and requiring special knowledge, the court appoints a court expert upon the request of a person participating in the case or by consent of persons participating in the case.

The court may appoint a court expert on its own initiative if this appointment is provided by law or stipulated in an agreement, or is necessary to verify an application concerning the falsification of presented evidence, or if it is necessary to conduct an additional or a repeated court expertise.

The court determines the range and contents of matters, in respect

of which a court expertise is to be conducted. Persons participating in the case are entitled to present to the court the matters which are to be clarified in the course of the court expertise. The court is obliged to substantiate the rejection of the matters, presented by persons participating in the case.

Persons participating in the case have the rights:

- to apply for the summoning of persons, indicated by them as experts, or for the conduction of a court expertise at a specific expert institution;
- to recuse experts; to apply for additional questions to the expert to be added into the ruling on the appointment of a court expertise;
  - to give explanations to the expert;
  - to access the expert opinion or the report on the impossibility to state an opinion;
  - to apply for the conduction of an additional or a repeated court expertise.

The court issues a ruling on the appointment of a court expertise or on the rejection of a motion for the appointment of a court expertise.

The ruling on the appointment of a court expertise specifies:

- the reasons for the appointment;
- the family name, first name and patronymic of the expert or the name of the expert institution, at which the court expertise is to be conducted;
- questions, posed to the expert; materials and documents placed at the expert's disposal;

- the term, during which the court expertise is to be conducted and an expert opinion is to be submitted to the court.

A ruling must likewise contain an indication of the warning about the criminal liability for stating a deliberately false opinion, given to the expert.

A court expertise is conducted by state court experts by order of the head of a state court expert institution or by other experts from among the persons having special knowledge in compliance with the federal law.

Several experts may be entrusted with conducting a court expertise.

Persons participating in the case may be present during the conduction of a court expertise (except for cases, where such presence could impede the normal work of the experts), but they may not interfere in the examination.

The presence of the participants of commercial proceedings is not allowed during the drawing-up of the expert opinion by an expert, as well as during the experts' consultations and the formulation of conclusions, if the court expertise is conducted by a commission of experts.

An examination by a commission of experts is conducted by at least two experts of the same speciality. The court specifies that the examination is to be carried out by a commission of experts.

If the opinions of experts coincide, based on the results of conducted examinations, they draw up a single expert opinion. If there are differences of opinions, each expert, participating in the court expertise, gives a separate opinion regarding the matters causing the differences.

A complex court expertise is conducted by at least two experts of different specialities.

The experts' opinion includes the type and volume of examinations, conducted by each expert, the facts established and the conclusions made by each expert. Each expert, participating in the complex court expertise, signs the part of the expert opinion, containing the description of the examinations, made by this expert, and is liable for it.

A general conclusion is drawn by experts, competent to evaluate the gained results and to formulate the given conclusion. Where there are differences between experts, the results of expertise are formalised in compliance with this Code.

On the basis of conducted examinations and subject to their results, the expert in their own name or an expert commission states a written opinion and signs it.

The expert opinion or the opinion of an expert commission must include the following:

- 1) the time and place of conduction of the court expertise;
- 2) the reasons for conducting the court expertise;
- 3) data on the state court expert institution, and on the expert (surname, first name, patronymic, speciality, working record, scientific degree and academic status, current position), entrusted with the conduct of the court expertise;
- 4) records in respect of the warning, given to the expert in compliance with the laws of the Russian Federation, concerning the criminal liability for stating a deliberately false opinion;

- 5) questions posed to the expert or the expert commission;
- 6) objects of examination and case materials, presented to the expert for conducting the court expertise;
- 7) contents and results of the examination with an indication of methods applied;
- 8) an evaluation of the results of the examination, conclusions regarding the posed questions and their substantiation;
- 9) other data in compliance with federal laws.

Materials and documents, illustrating the opinion of the expert or of the expert commission, are attached to the expert opinion and are an integral part of the



opinion.

If in the course of a court expertise an expert establishes circumstances, which are significant to the case, and in respect of which questions have not been posed, the expert may include conclusions, regarding such circumstances, into the opinion.

The expert opinion is announced in court session and is examined together with the other evidence in the case.

An expert may be summoned before the court upon the motion of a person participating in the case or on the initiative of the court.

After the announcement of the opinion, the expert may give the necessary explanations in respect of it and is obliged to answer additional questions, posed by persons participating in the case and by the court. The expert's answers to additional questions are entered into the minutes of the court session.

If an expert opinion is not sufficiently clear and full, as well as if questions arise in respect of the circumstances examined beforehand, an additional court expertise may be appointed with the same or another expert entrusted with conducting it.

If doubts arise in respect of the substantiation of the expert opinion or if there are contradictions in the conclusions of an expert or of an expert commission, a repeated court expertise may be appointed with regard to the same questions, and another expert or another expert commission is entrusted with conducting it.

In order to receive clarifications, consultations and to learn the professional opinions of persons having theoretical and practical

knowledge in the matter of the dispute before the court, the court may summon a specialist.

Counsels of staff of a specialised court, appropriately qualified to the specialisation of the court, may be summoned in the capacity of specialists.

Specialists provide consultations impartially and in good faith, based on their professional knowledge and according to their inner conviction.

A consultation is provided in the oral form, without conducting any special research, appointed on the basis of a ruling of the court.

In order to get clarifications and additions regarding the consultation provided, the court and the persons participating in the case may pose questions to the specialist.

Experts and specialists are compensated for the expenses, incurred by them, due to their appearance before the court, including travel expenses, expenses for the rental of housing accommodation and additional expenses, related to habitation away from the place of permanent residence (daily allowance).

Experts receive a reward for the work, carried out by them, by order of the court, if such work does not belong to their official duties as employees of state court expert institutions.

Specialists receive a reward for the work, carried out by them by request of the court, unless they are counsels of staff of a specialised court.

The amount of an expert's reward is determined by the court by agreement with the persons participating in the case and by agreement with the expert.

The sums of money, payable to experts are deposited to the court's bank account by the person that files the corresponding motion within the term, fixed by the court. If motions are filed by both parties, the required sums are deposited to the court's bank account in equal amounts.

If the sums of money, payable to experts, are not deposited to the court's bank account within the time fixed by the court, it may reject a motion to appoint a court expertise, if the case can be considered and a decision can be delivered on the basis of other evidence presented by the parties.

The sums of money due to experts and specialists are paid upon the discharge of their duties.

The sums of money due to experts and witnesses are paid from the depository bank account of the court.

The services of a specialist drawn to the participation in court proceedings by the court, specialist's daily allowance and the compensation for the expenses incurred by him due to the appearance before the court, as well as the sums of money, payable to experts, should the court on its own initiative appoint a court expertise, are paid at the expense of the federal budget.

Dr Sergey Zakharov

President of the  
Russian Chamber of  
construction expert  
witnesses

Bad Gastein, Salzburg



## 2013 International Conference Bad Hofgastein

In cooperation with the Austrian Association of Judges the Central Association of Generally Sworn and Court Certified Experts of Austria (Hauptverband der Gerichtssachverständigen) each year hosts the International Conferences for Experts and Legal Professions in Gastein Valley.

On the one hand these traditional seminars are very informative and on the other hand it presents the an excellent opportunity for networking for Experts, Judges and Lawyers.

The participants have the opportunity to meet each other, to establish contacts and to have the possibility of mutually beneficial discussions.

Traditional Bavarian curling and a pleasant social evening complete the programme and help make a perfect conference.

Furthermore Gastein Valley itself serves a great ski area with about 200 kilometres of ski slopes. Snowshoe hiking off-piste or ice climbing and wonderful

promenades are there to invite you to exercise!

In the Alpentherme Gastein spa you can relax and recuperate after a long day at the conference.



### 35th International Conference "Construction & Real Estate":

13th – 18th January 2013  
A-5630 Bad Hofgastein,  
Salzburg

**Starts:**

Sunday, 13th January 7.00 pm

### 10th International Conference "Special Aspects on Law & Practise for Experts":

13th – 17th January 2013  
A-5630 Bad Hofgastein,  
Salzburg

**Starts:**

Sunday, 13th January 7.00pm  
together with "Construction & Real Estate

### 36th International Conference "Road Traffic Accident & Damage to a Vehicle"

20th–25th January 2013  
A-5630 Bad Hofgastein,  
Salzburg

**Starts:**

Sunday 20th January 7.00pm

Conference language: German

**For further information see:**

[www.gerichts-sv.at/veranstaltungen.html](http://www.gerichts-sv.at/veranstaltungen.html)



Croatia, Hungary, Poland, Romania, Slovakia and Slovenia. The Salzburg Forum objectives focus on three areas: fostering regional cooperation in internal security, improving representation of interests in the European institutions, strengthening relations with third countries.

The new, jointly developed 18 months work programme applicable from 1 July 2012 will be implemented under the Hungarian Presidency.

In the framework of the programme Hungary will resolutely promote the Council of the European Union to decide on the Schengen accession of Bulgaria and Romania. Interior aspects of the Schengen governance and the EU budget are of high importance for all Salzburg Forum countries therefore these topics will be taken into particular consideration under the Hungarian Presidency.

With regard to the practical cooperation between the Salzburg Forum countries Hungary

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## News from Hungary

### Hungarian Chamber of Juridical Experts

On 15th September 2012 the Assembly of Delegates of the Hungarian Chamber of Juridical Experts (MISZK) took place in Szolnok and elected the new officials of the Chamber.



Mr Zoltán LOVÁSZ became the new president of the Chamber for the forthcoming 4 years.

Zoltán Lovász thanked for the confidence of the delegates. He emphasized that "We are going to work". Among the first tasks he named the realization of a new working plan.

Mr Gábor Melegh former president of the MISZK in the last 12 years became chairman emeritus.

### European Commission

The European Commission supports the call for applications released by the Ministry of Public Administration and Justice for professional language training for judges and prosecutors.

The aim for the programme is more effective specialist English language learning combined with ongoing training and courses which enable the building of interdisciplinary and international links.

The Czech Republic, Poland, Croatia and Hungary are taking part in the project, which begins January 2013.

The interdependent modules will be taught in Prague, Krakow, Zagreb

and Budapest, associated with the training academies for judges in the participating countries. The European Union will finance 80 per cent of the total costs of 124,500 euros.

### Salzburg Forum

Hungary took over the presidency of the Salzburg Forum on 1 July 2012.

The Salzburg Forum, founded on the initiative of Austria in 2000, is a Central-European internal security partnership between the Interior Ministers of Austria, Bulgaria, Czech Republic,



... continued from **page 1**

The interactive panel session provided much forward for thought as amongst the topics we considered were the differences between a court appointed (a civil law concept) and a single joint expert (a common law concept). It was certainly an excellent opportunity to enhance our knowledge and consider how our own practices can be adapted.

At the conference we were delighted to formally launch some of EuroExpert's work – the focus on standards is as ever important. It is for this reason that we have now published what we hope, will be a useful guide "Language concerning the Use of Experts". The guide seeks to establish some simple definitions of the terminology

regularly used in the world of experts and dispute resolvers. As our network expands I am sure it will prove to be a very useful tool.

This edition of the e-bulletin as ever provides a diverse selection of articles – particular highlights are the article on mediation in the Czech Republic and from the conference the use of experts in Russia.

All that remains is for me to wish you all a very merry Christmas and a prosperous 2013.

**Nicola Cohen**  
President  
December, 2012



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considers it important to sign the agreement on cross-border enforcement of road safety related traffic offences which may be concluded at the Ministerial Conference to be held in October in Hungary.

The Hungarian Ministry of Interior will organize in the coming six months meeting of the Interior Ministers of Salzburg Forum countries.



Delegates at the Salzburg Forum

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