

PERMANENT COURT EXPERT WITNESSES IN THE FIELD OF MECHANICAL ENGINEERING IN THE LEGAL SYSTEM OF BOSNIA AND HERZEGOVINA

STALNI SUDSKI VJEŠTACI MAŠINSKE STRUKE U PRAVNOM SISTEMU U BOSNI I HERCEGOVINI

Nermin Šehović

*LLM, FBiH Police
Administration (FPA)*

Ključne riječi:

dokazivanje, stalni sudski vještaci, imenovanja vještaka, mašinstvo

Keywords:

evidence, permanent court expert witnesses, expert witnesses' appointments, mechanical engineering

Paper received:

01.12.2023.

Paper accepted:

28.12.2023.

Stručni rad

REZIME

U radu se nastoje objasniti pojmovi koji se odnose na dokazivanje i stalne sudske vještake kao dokazno sredstvo u pravnom sistemu Bosne i Hercegovine kroz zakonodavno-pravni okvir koji je preduslov za obavljanje poslova vještaka u Bosni i Hercegovini, počev od uvjeta i postupka imenovanja vještaka, stručne komisije u postupku imenovanja vještaka, liste vještaka i imenika vještaka, nadzora nad radom vještaka od organa koji vodi postupak, periodične ocjene rada vještaka, mjera javne opomene i razrješenja vještaka, prava i dužnosti vještaka, tarifa o nagradama i naknadama troškova za rad vještaka te kadrovskih i institucionalnih kapaciteta stalnih sudskih vještaka mašinske struke u Bosni i Hercegovini.

Professional paper

SUMMARY

The paper aims to explain the concepts related to proving and to permanent court expert witnesses, as a means of proving in the legal system of Bosnia and Herzegovina, on the basis of the legal and legislative framework that is a prerequisite for the performance of expert witnesses work in Bosnia and Herzegovina. The paper starts with: the conditions and procedures for appointing experts and professional commissions needed for the process of appointing experts, lists of expert witnesses and directory of expert witnesses, supervision of their work done by the authority leading the procedure, periodic assessment of expert witnesses' work, measures of public reprimand and dismissal of experts, rights and duties of experts, tariff on awards and reimbursements of expenses for the work of expert witnesses and staff list, and institutional capacities of permanent court expert witnesses in the field of mechanical profession in Bosnia and Herzegovina..

1. INTRODUCTION

Expert witnesses as a mean in the process of proving and the concept of expertise

The court, i.e. the authority conducting the proceedings, is obliged to fully and truthfully establish the contested facts on which the validity of the request, i.e. the application of substantive law, depends. The determination of the factual situation in the case and the formation of a belief about the content of the relevant facts depends on the correct application of the procedural rules. Proving represents the actions of procedural entities consisting of proposing, selecting, collecting,

examining and evaluating evidence in order to establish the truth of the claims of the parties in the proceedings and create the court's assumptions, i.e., the authorities, about the facts that are essential for the application of law.

The parties in the proceedings are obliged to prove the facts on which they base their claims, but the court is still authorized in certain proceedings, primarily in criminal proceedings, to present evidence that the parties did not propose, if it determines that the parties are seeking to dispose claims that they cannot be disposing. In order for the court, or the authority conducting the proceedings, to base its decision on a fact, as a rule, it would have to

be sure of the existence of that fact, which presupposes that there is such a degree of conviction in the existence of a fact that any reasonable doubt about the possibility of the existence of something else would be excluded. What evidence will be presented in order to establish decisive facts is decided by the court, and the subject of evidence is the claims of the parties about the existence or non-existence of facts on which the application of the applicable law in the specific case depends.

An expert witness is a person invited to present his/her current observations (findings) and opinions on facts that could be important for determining the veracity of allegations that are the subject of proving before the court, and to do so he/she is using his/her professional and specific knowledge.

Expertises from various fields, as specific areas of application of science to specific cases, represent one of the means of proving. Therefore, requests for expert witnesses' opinions are increasing, so there is almost no court proceeding in which some expert witnesses' opinions have not been ordered, for example: medical, financial or expert witnesses' opinions regarding mechanical engineering as in cases of value assessment or damage done to vehicles, machines or metal structures, with the possibilities of extension to the relevant subfields, as energy and/or process engineering. A machine or a device is a set of parts connected into one logical whole with the aim of performing a specific operation, that is any device that transmits or converts energy or a device for increasing the value of force, changing the direction of force or increasing the speed with which some work is performed, where machines, on the one hand, require one

type of input energy to give another type of output energy at the end, usually in the form of mechanical work. Devices without moving parts are called tool.

An expert witness from the field of mechanical engineering, through his/her findings and opinions, contributes to the logical form of proving by stating reasons and arguments for a certain claim based on laws, regulations, rules of the profession, experience and skill, and in his/her findings and opinions provides answers to the questions posed in the Request for expertise, given in the form of an order or a decision, issued by the body requesting mechanical expertise.

The expert examination is conducted by the court, i.e., the body, and the expert witness is bound by the instructions and conclusions of the court (body), but considering the importance and role of the expert witness, we note that the expert witness can be given clarifications, that he/she is allowed to review the file, and at the expert witness's request, new evidence can be presented to determine the circumstances significant for establishing the expert witness's opinion.

There are specific situations in complex cases where the court can appoint several expert witnesses, and they can submit a joint finding and opinion, and if their findings differ significantly and contradict other evidence presented, the court can renew the expert examination with the same or other expert witnesses. In any case, due to the principle of „iure novit curia“, when deciding on the application of legal norms, the court cannot (must not) appoint an expert witness to give answers to legal questions.

2. LEGAL FRAMEWORK FOR EXPERT WITNESSES' WORK IN BOSNIA AND HERZEGOVINA

Although expert witnesses' testimony in Bosnia and Herzegovina is prescribed and applied as a means of evidence in civil (litigation [1] and non-litigation proceedings), [2] criminal proceedings [3], administrative proceedings [4], administrative disputes [5] and enforcement proceedings [6] and despite the fact that 'state' laws exist, i.e., at the level of BiH, that regulate civil and non-litigation, criminal, administrative proceedings and administrative disputes, as well as executive proceedings, there is no 'state' law that regulates the field that refers to 'expert

witnesses' themselves. Instead, this field is regulated at the entity level by the Law on expert witnesses [7] (in the following: ZV FBiH). In the Brčko District of BiH, the area relating to expert witnesses is prescribed by the Rulebook [8]. As a basis for researching the paper's topic, related to the position of an expert witness in the legal system of BiH, the Law on expert witnesses of the Federation of Bosnia and Herzegovina will be used, which, in a fairly similar manner to the Law on expert witnesses of Republika Srpska, regulates certain issues in relation to certain solutions of the Rulebook on conditions, method and the procedure of registration on the list of permanent court

expert witnesses in the Brčko District of BiH. Regarding the field of expert witnesses' testimony in civil proceedings and the role of expert witnesses in specific proceedings, in addition to the application of the entity laws on expert witnesses and the Law on civil procedure in BiH, we emphasize that question on practical application of some domestic and international regulations, standards and EU recommendations regarding expert witnesses in socio-economic trends and civil 'disputes', and the future legal harmonization and compliance of specific regulations with the EU standards remains open.

Here, first of all, we are referring to the current 'Instructions on the minimum content of the findings of the court expert witnesses for the assessment of the subject of the pledge as an instrument for securing loan collection', adopted by the Development Bank of the Federation of Bosnia and Herzegovina [9], which is mandatory in projects financed by the Development Bank of the Federation of Bosnia and Herzegovina, and to the recommendations of the World Bank given in 'Comparative analysis of expert witness's role in judiciary systems in the Western Balkans' [10], relevant for projects in Bosnia and Herzegovina that are financed by the World Bank, and the 'Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States' [11], adopted by the European Commission for the efficiency of justice, and the regulations as the 'Guide to Good Practices in Civil Judicial Expertise in the European Union' [12] or the rules contained in 'Court Expertise in Civil Proceedings in the EU' [13], (regulations of the EU Parliament).

In the following will be discussed the existing positive legal regulations, legal and by-law regulations, of domestic legislation related to expert witnesses, based on the Law on expert witnesses.

The Law on Expert Witnesses in its Article 2 prescribes (defines) that 'An expert witness is only considered to be a person who has been appointed to carry out expert work in accordance with the provisions of the specific Law on Expert Witnesses', although the Law on Expert Witnesses does not at all define what is meant by the term 'expertise', instead it is left to other procedural laws in which expert witnesses undertake the procedural - evidentiary action of expertise.

The ZV FBiH prescribes the conditions and procedure for the selection and appointment of expert witnesses who perform expert work in judicial, administrative and misdemeanor proceedings, their rights and duties as expert witnesses, supervision of their work, supervision of expert work done by legal entities, maintenance of the directory of experts, as well as other important issues for the work of experts. Expert witnesses (as individuals) from the territory of BiH can perform expert work in the Federation, and exceptionally, if there are no experts in BiH of the appropriate profession, or there are other legal or real reasons why experts from BiH cannot perform expert work in a specific case, expert witnesses' work in the Federation can be performed in individual cases by an expert from another country who, according to the law of that country, meets the requirements for performing expert witness' work.¹

Likewise, on the basis of the ZV F BiH² for the performance of expertise in one or more areas, the Federation, canton, city or municipality, or other legal or natural person may establish a business organization for performing expertise, and which will be - as a legal entity - established in accordance with the Law on Business Organizations for the provision of certain professional services of the appropriate profession. [14]

Before the beginning of the performance of duties, a person appointed as an expert witness, by signing the Solemn Declaration, takes the duty, and his/her written statement is given to the Federal Minister of Justice. The text of the mentioned Declaration goes 'I declare that I will perform my duties as an expert witness honestly and conscientiously to the best of my knowledge and act in accordance with the Law, other regulations and rules of the profession.'³

The expert has a round stamp, 38 millimeters in diameter, which can only be used in the performance of the expert's duties, and the expert's imprint and handwritten signature are deposited in the Federal Ministry of Justice. The text of the seal is written in one of the languages and alphabets that are in official use in the Federation and contains: the name and surname of the expert, the designation 'expert' with an indication of the area, group or

¹ Article 45 of the ZV FBiH

² Article 38 of the ZV FBiH

³ Article 16 of the ZV FBiH

subgroup, including the narrow specialization of expertise for which the expert is appointed and the expert's place of residence.⁴

An expert is appointed for a period of six years, with the possibility of re-appointment. He/she is appointed and dismissed by the Federal Minister of Justice, at the proposal of the Commission, and a candidate not proposed by the Commission cannot be appointed as an expert.⁵

After passing this six-year period, the expert is obliged to submit a request for re-appointment, and at the proposal of the Commission, his/her mandate is extended each time after the expiration of this period for a period of the next six years, unless in the specific case, the Commission, taking into account the criteria provided for the appointment, does not determine otherwise.

An expert whose mandate has not been extended is deleted from the directory and from the list of experts, what is published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina, as well as on the bulletin board at the headquarters of the Federal Ministry of Justice and on the bulletin boards of courts and prosecutor's offices in the Federation.⁶

After the appointment, the expert is obliged to complete training on the performance of expert witnesses' work, according to the regulations issued by the Federal Minister of Justice.⁷ The expert witness submits data on his/her further professional development and specialization to the body that keeps records on expert witnesses, i.e. the Federal Ministry of Justice, which is then obliged to enter this data in all relevant documents and promptly inform the courts and prosecutor's offices of the Federation about all possible changes.⁸

Pursuant to the obligations of the Law on Expert Witnesses⁹, the Federal Minister of Justice issued 'The Rulebook on the training of expert witnesses to perform expert witnesses' work' [15], (hereinafter: the Rulebook), which regulates the procedure for the training of expert witnesses regarding performance of their work. An expert commission organizes and

carries out this training process, while the Federal Minister of Justice, on the proposal of the expert commission, brings the expert training program and the plan for its implementation. Expert witnesses who have been appointed as expert witnesses in a certain scientific field by the decision of the Federal Minister of Justice are subject to training obligations.¹⁰

Expert training is carried out in the field of judicial, administrative and misdemeanor (legal) procedures, primarily in regard to the rights, duties, tasks and responsibilities of expert witnesses, the expert examination procedure and specifics of certain types of expert examination in accordance with legal provisions. The training is carried out by prominent legal experts appointed by the Federal Minister of Justice on the proposal of the expert commission's president.

Upon completion of expert training, the Federal Ministry of Justice issues a certificate of completion, which will be added to the personal file of expert. Legal experts who train expert witnesses have the right to compensation for their work in the amount of 300.00 KM for one day of training, and in exceptional cases this compensation can be increased up to 50%, what is decided by the Federal Minister of Justice on the proposal of the expert commission's president.¹¹ Likewise, in case of changes of the procedural laws in the respective legal fields, the expert commission 'can' (and here should be stipulated that the commission is 'obliged to') organize subsequent training of expert witnesses in order to educate them about new procedural solutions.¹² Expert witnesses must be insured against liability for damage caused during the performance of their expert work. The minimum amount of insurance, the type of insured damage and the extent of the risk covered are determined by the Federal Ministry of Justice.¹³

Regarding expert witnesses' responsibility, it is important to note that the Ministry of Justice, in accordance with the obligations under the Law on Expert Witnesses¹⁴, adopted 'The Rulebook on compulsory insurance of expert witnesses' [16] (hereinafter: the Rulebook) which

⁴ Article 17 of the ZV FBIH

⁵ Article 10 of the ZV FBIH

⁶ Article 18 of the ZV FBIH

⁷ Article 34 of the ZV FBIH

⁸ Article 35 of the ZV FBIH

⁹ Article 7, Paragraph 2 of the ZV FBIH

¹⁰ Article 2 of the Rulebook

¹¹ Article 3 of the Rulebook

¹² Article 4 of the Rulebook

¹³ Article 36 of the ZV FBIH

¹⁴ Article 36 of the ZV FBIH

regulates: liability insurance for damage caused during performance of expert witnesses' work, the minimum amount of insurance, the type of insured damage and the extent of the risk covered by the insurance. Before starting their work, expert witnesses are required to be insured against liability for damage that they might cause to third parties by performing their expertise, and liability insurance is provided by the fact that each expert witness must have an insurance contract with the appropriate insurance company¹⁵ and must take care that the insurance is duly and extended in a timely manner.¹⁶ In regard to the mandatory expert insurance, the minimum amount of insurance for each insured case is 30,000.00 KM, and the conditions of insurance, the type of insured damage and the extent of the risk determines the expert in cooperation with the insurance company with which he/she concludes the insurance contract¹⁷.

2.1. Conditions and procedure for appointing expert witnesses

At the proposal of one or more courts, after they notice in their work that they lack expert witnesses for a certain field or specialty, the Federal Minister of Justice publishes a public call for the appointment of expert witnesses.¹⁸ After the announcement of public call, the candidate, who is applying for the appointment, i.e. to be an expert witness, is obliged to indicate in the Request for appointment the scientific field (medicine, finance, etc.), as well as his/her narrow specialty for which he/she submits the request for appointment, and according to the ZV FBiH, along with the Request for appointment, the candidate has to submit: a detailed biography; evidence of fulfillment of the conditions requested by the ZV, including published scientific works; evidence of participation in organized forms of professional training; at least three letters of recommendation from presidents of courts, judges or prosecutors before whom the applicant may have performed previous expertise, or managers of scientific and other

institutions and establishments, or other legal entities where the applicant worked or works, or for whom he/she performed professional work, and a list of the last ten cases in which he/she performed the duties of an expert witness, if he/she had already performed such duties.¹⁹

For an expert can be appointed a person who applies to the announced public call for the appointment of expert witnesses, published in the Official Gazette of the Federation of Bosnia and Herzegovina and in the three most circulated daily newspapers distributed in the territory of the Federation of Bosnia and Herzegovina by the Federal Minister of Justice, and this person has to meet the following conditions: to be a citizen of Bosnia and Herzegovina; to have appropriate experience and professional knowledge in a specific field; to have appropriate school education; to be a person with proven professional abilities who enjoys the reputation of a careful, objective and expeditious expert in a certain field, and to be a person distinguished by integrity and high moral qualities.²⁰

2.2. Expert commission in the process of appointing expert witnesses

For the purpose of determining a proposal of list of expert witnesses, the Federal Minister of Justice appoints an expert commission consisting of permanent members and brings a 'Rulebook for the expert commission's work for the purpose of determining a proposal of list of expert witnesses' [17] that refers to expert commission's work, its composition, ways of convening its sessions, discussions at the sessions, decision-making as well as other issues.

The commission consists of permanent and temporary members. The permanent members are the president of the Supreme Court of FBiH or a judge authorized by the Supreme Court president, the president of the Bar Association of the Federation of Bosnia and Herzegovina or a lawyer authorized by the Bar Association president, the chief federal prosecutor or a prosecutor authorized by the chief federal prosecutor and a representative of the Federal Ministry of Justice, while temporary members

¹⁵ According to the Article 6 of the Rulebook, the expert will be considered to have concluded a liability insurance contract when the contract is signed by the expert and the insurance company.

¹⁶ Article 2 and 3 of the Rulebook

¹⁷ Article 5 of the Rulebook

¹⁸ Article 4 of the ZV FBiH

¹⁹ Article 5 of the ZV FBiH

²⁰ Article 3 of the ZV FBiH

of the commission are experts in the fields in which the expertise is performed.²¹

In addition to the evidence that the candidate for an expert witness submits with his/her application, the Expert Commission (for whose work the candidate bears the costs) also obtains other data and information that the Commission deems necessary in order to determine the candidate's expertise, including court records, recommendations and opinions of professional associations, expert witnesses associations, the opinion of the current or former employer on the candidate's expertise.²²

After receiving requests from candidates, the Expert Commission conducts the qualification testing of candidates. This testing verifies the candidates' abilities in accordance with the criteria. Qualification testing is carried out in the form of a written examination, and the commission may decide to conduct an additional oral examination, after the written examination, of individual candidates who did not fully pass the written examination, which is decided by the Candidates' Qualification Testing Commission from that field in each individual case, and the procedure of the qualification examination testing is governed by a special rulebook issued by the Federal Minister of Justice.²³

The criteria for the expert witnesses' appointment, that the commission takes into consideration when decides if a candidate is capable of performing the duties of an expert witness, are: professional knowledge and work results; proven professional ability based on past career results, including participation in organized forms of professional training; ability proven through published scientific works and through activities in professional associations; working ability and the ability to professionally and clearly explain the given finding; the ability to impartially, conscientiously, zealously, decisively and responsibly perform expert witness's duties, as well as candidate's behavior outside of work, his/her integrity and reputation.

After conducting qualification testing of the candidates, evaluating the evidence submitted with the candidate's application and the data obtained by the commission and the acquired knowledge (belief) that certain candidates are

capable of performing expert witnesses' work, the commission makes a proposal for the list of expert witnesses and submits it to the Federal Minister of Justice.²⁴

The commission is in session in its narrow and its wider convocations. The commission in its narrow convocation consists of the commissions' permanent members appointed by the Federal Minister of Justice, and the commission's wider convocation consists of the commission's permanent members and commission's temporary members for a specific area from which expert witnesses are appointed. Commission's narrow convocation is in session when decisions concern the commission's work and tasks, and its wider convocation is in session when the commission decides on issues in which the participation of temporary members is required. Also, the president of the commission can authorize individual members of the commission to perform certain actions within the competence of the commission.²⁵

The Commission, within the framework of its competences: adopts rules of procedure; determines the list of expert witnesses; obtains data and information, including court records, recommendations and opinions of professional associations, expert witnesses' associations, opinions of the current or former employer about the candidate's expertise, if the commission deems it necessary in order to determine the candidate's expertise; performs qualification testing of candidates; conducts an interview with all candidates who successfully pass the qualification test; checks whether the candidate is capable of performing expert witness' duties; prepares a proposal for the list of expert witnesses and submits it to the Federal Minister of Justice;²⁶ drafts a proposal on the extension of the expert witness's mandate; considers objections to the expert witness's work in order to propose appropriate measures; performs a periodic assessment of the expert witness's work and proposes or imposes appropriate measures, and informs the Federal Minister of Justice about it; imposes public warning measures; proposes the dismissal of expert witnesses; gives an opinion on the fulfillment of the conditions for entry into the Directory of legal entities for the performance of expert witnesses' work; gives an

²¹ Article 2 of the Rulebook

²² Article 6 of the ZV FBiH

²³ Article 7 of the ZV FBiH

²⁴ Article 9 of the ZV FBiH

²⁵ Article 7 of the Rulebook

²⁶ Article 6 of the Rulebook

opinion on the termination of fulfillment of the conditions for entry in the directory of legal entities and proposes deletion from the directory and the List of legal entities.²⁷

The work of the Expert Commission is managed by the president, and in the case of the president's absence, a permanent member designated by the president will serve as the president's replacement. For full decision-making, it is necessary that at least three members participate in the session in the narrow convocation, and in the session in the wider convocation, five members, including at least three members of the narrow convocation, and decisions are made by majority vote.²⁸

It is important to note that the commission will perform a periodic evaluation of the expert witnesses' work, once a year or as needed, and the commission's president can appoint three members who will evaluate the expert witness's work and propose the possible imposition of public warning measures and propose the dismissal of the expert witness.²⁹

2.3. List of experts and directory of experts

On the list of permanent court expert witnesses in the Federation of Bosnia and Herzegovina of the Federal Ministry of Justice of the Federation of Bosnia and Herzegovina³⁰, there are a total of 1,206 court expert witnesses and five commercial companies that perform work of expert witnessing. The expert witnesses are on lists of permanent court expert witnesses in the following areas: assessment of the value of damage to cultural and historical heritage; electrical engineering, geodesy, geology, information and communication field, psychology, pedagogy, fire protection and safety at work, mining, traffic, veterinary medicine, forestry, architecture, civil engineering, criminology, mechanical engineering, medicine, medicine - subfield of psychology, economics and agriculture.

It is important to note that the legislator, through the civil-procedural legislation in Bosnia and Herzegovina, i.e. (The law on civil procedure of FBiH, in the following: ZPP FBiH), in the provisions regarding the procedural position, rights and duties of expert

witnesses, equated expert witnesses and interpreters, so the provisions relating to expert witnesses also apply to interpreters³¹, but the legislator also went 'one step further' and, according to the Commentary of the ZPP, called (defined) an interpreter as a 'type of expert' who is proposed by the parties from among the appointed court interpreters and who help certain participants in the procedure to communicate with each other and with the court (deaf, mute, etc.), and in addition, an interpreter will be engaged when the parties and the intervener do not know any of the languages that are in use in court for the oral and written translation of procedural actions (presentation of proposed evidence) that are undertaken. [18] **The list of experts** contains: the surname and first name of appointed expert, his/her residence and address, service telephone number, as well as the area, group, or subgroup of expertise, including his/her narrow specialization for which is appointed. The list of expert witnesses and all changes to that list are delivered to all courts and prosecutor's offices in the Federation, and as well, published in the Official Gazette of the Federation of Bosnia and Herzegovina and on the notice board at the headquarters of the Federal Ministry of Justice and on the notice boards of courts and prosecutor's offices in the Federation.³²

Directory of experts (in the following: Directory) is a record of the Federal Ministry of Justice in the form of a public book on appointed expert witnesses. Data entered in the Directory are: ordinal number of registration, surname, name of one of the parents and the name of the expert witness, his/her residence, residential address and service telephone number, occupation, and if the expert witness is employed, the name of the employer, and for which area, group or subgroup, including the narrow specialization of expertise, is appointed as an expert witness, the number and date of the decision on appointment, the number and date of the decision on the imposition of measures, the number and date of the decision on the dismissal of the duties as an expert witness, the date and place of giving the Solemn Declaration and remarks, and the decisions and other relevant documents on expert witnesses, as well as the signed text of the Solemn Declaration³³

²⁷ Article 6 of the Rulebook

²⁸ Article 8 of the Rulebook

²⁹ Article 10 of the Rulebook

³⁰ Available at <https://www.fmp.gov.ba/bs/lista-stalnih-sudskih-vjestaka-u-federaciji-bih.html>

³¹ Article 162 of the ZPP FBiH

³² Article 12 of the ZV FBiH

³³ Article 14 of the ZV FBiH

are submitted, as well. To a candidate who is not appointed as an expert witness, the Federal Minister of Justice issues a decision against which an appeal is not allowed, but an administrative dispute can be initiated, which rejects the request for appointment and which is delivered to the candidate within 8 days.³⁴

The expert witness is obliged to inform the Federal Ministry of Justice about any change of data entered in the Directory 'immediately', and at the latest within eight days.³⁵

2.4. Supervision of the expert witness's work by the authority leading the procedure

The presidents of the courts, i.e. the bodies leading the proceedings, monitor the expert witnesses' work and inform the Federal Minister of Justice about their observations, i.e. remarks and imposed fines, and propose determining the expert witness's responsibility in case of observed objections to the expert witness's work.³⁶ In the same way, the parties, that is, the attorneys of the parties, as well as professional associations and the association of expert witnesses, can submit objections to the Federal Minister of Justice in writing regarding the expert witness's work.³⁷ If the Commission does not dismiss the expert witness on any of the aforementioned grounds: if the expert witness himself/herself demands that he/she be dismissed; if he/she is sentenced to prison for an act that makes him/her unfit to perform the duties of an expert witness; if it is subsequently determined that he/she does not meet the conditions of his/her appointment; if the violations of the performance of expert witness's work are in cases where the expert witness performs expert work unprofessionally or unconscionably, does not respect the deadlines established for the performance of expert work without a justified reason, as well as when he/she does not respect the court or the parties, does not take over the cases assigned to him/her, or when his/her work has other serious objections, or when the expert witness does not notify the Federal Ministry of Justice 'immediately' and at the latest within eight days about the change of data entered in the Directory, the Commission may issue a public warning measure, which is published without

delay in the Official Gazette of the Federation of Bosnia and Herzegovina, as well as on the notice board at the headquarters of the Federal Ministry of Justice and on the notice boards of courts and prosecutor's offices in the Federation, or if an expert witness loses the ability to continue performing the duties of an expert witness, the Federal Minister of Justice submits to the Commission the comments submitted by the presidents of the courts, i.e. the bodies that lead the proceedings, as well as the comments submitted by the parties, i.e. the parties' attorneys, as well as professional associations and the association of expert witnesses, for the purpose of their consideration and proposal, i.e. imposition, of appropriate measures by the Commission.³⁸

2.5. Periodic assessment of expert witnesses' work

Assessment of the expert witnesses' work is carried out periodically by the Expert Commission, on the basis of which the Commission proposes or imposes appropriate measures, and informs the Federal Minister of Justice about it.³⁹ The commission obtains data and information, including court records, opinions of professional associations and expert witnesses' associations, interview with an expert, interview with the submitter of objections if it deems necessary for the periodic assessment of the expert witness's work, i.e. for consideration of objections.⁴⁰

The permanent members of the commission, by majority vote, adopt the Commission's Rules of Procedure, which regulates the internal functioning of the commission, and in particular regulate the procedure for selecting and appointing expert witnesses, conducting periodic evaluations of the work of expert witnesses, proposing and imposing measures, keeping records and other issues related to the work of the commission. The Commission's Rules of Procedure is a public document and it is published in the Official Gazette of the Federation of Bosnia and Herzegovina. The commission reaches its decisions by majority vote of all members, and the Federal Ministry of Justice performs the commission's administrative tasks.⁴¹

³⁴ Article 13 of the ZV FBiH

³⁵ Article 15 of the ZV FBiH

³⁶ Article 19 of the ZV FBiH

³⁷ Article 20 of the ZV FBiH

³⁸ Article 21 of the ZV FBiH

³⁹ Article 22 of the ZV FBiH

⁴⁰ Article 23 of the ZV FBiH

⁴¹ Article 46 of the ZV FBiH

The Federal Minister of Justice, when deems it is necessary, informs the professional associations, the association of expert witnesses, or other institutions and establishments about the received remarks, that is, the imposed measures.⁴²

2.6. Measure of public admonition and dismissal of the expert witnesses

In cases when an expert witness performs expertise unprofessionally or negligently, does not respect the deadlines established for performing expertise without a justified reason, as well as when does not respect the court or the parties, does not take over the cases assigned to him/her, or when there are other serious objections to his/her work, or when does not inform the Federal Ministry of Justice about the change regarding the data in the Directory of expert witnesses, the commission may issue a measure of public reprimand, which is published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina, as well as on the notice board at the headquarters of the Federal Ministry of Justice and on the notice boards of courts and prosecutor's offices in the Federation, and also, the commission propose the dismissal of an expert witness to the Federal Minister of Justice.⁴³

An objection against the decision on the imposition of a public admonition or against the dismissal of an expert witness may be submitted to the Federal Minister of Justice within eight days from the date of receipt of the decision, and the objection does not delay the execution of the decision, and the decision on the objection is final.⁴⁴

By decision of the Federal Minister of Justice, the expert witness will be dismissed from duties: if the expert witness requests to be dismissed; if happens to be sentenced to prison for an act that makes him/her unfit to perform the duties of an expert witness; if it is subsequently determined that he/she does not meet the requirements for the appointment to serve as an expert witness; if violations of the performance of expert work, defined in the ZV, are of 'a particularly serious nature'; if the expert witness loses ability to continue

performing the duties of an expert witness and if unjustifiably refuses to perform expertise.

The decision on dismissal is made by the Federal Minister of Justice on the proposal of the commission, and in the process of passing the decision on dismissal, the expert witness must be allowed to state his/her opinion regarding the facts and circumstances on which the decision on dismissal should be based.

No appeal is allowed against the decision on dismissal, but an administrative dispute can be initiated before the competent court. An expert witness who has been dismissed from duty is deleted from the Directory and from the list of expert witnesses, which is published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina, as well as on the notice board in the headquarters of the Federal Ministry of Justice and on the notice boards of courts and prosecutor's offices in the Federation.⁴⁵ The imposition of measures against expert witnesses is carried out by applying the principle, taking into account the severity of the violation of expert performance and its consequences, the degree of responsibility and the circumstances under which the violation was committed, as well as the previous work and behavior of the expert witness and all other circumstances that may affect the decision on the weight and type of measure.⁴⁶

2.7. Rights and duties of an expert witness

An expert witness is autonomous and independent, and in performing the expertise and work, the expert witness is obliged to comply with the rules of the profession, laws, other regulations and international standards, and the court or other authority conducting the proceedings is obliged to compensate the expert witness for the costs of the expertise as soon as possible.⁴⁷

'Diary of completed expertises' (in the following: Diary) is a record in the form of a book that an expert witness is obliged to keep, where this data is entered: ordinal number of registration, number and date of act of court or other body, business organizations and other legal entities at whose request an expertise is performed, i.e. the surname, name and address of the person requesting the expertise and the

⁴² Article 24 of the ZV FBiH

⁴³ Article 25 of the ZV FBiH

⁴⁴ Article 26 of the ZV FBiH

⁴⁵ Article 27 of the ZV FBiH

⁴⁶ Article 28 of the ZV FBiH

⁴⁷ Article 29 of the ZV FBiH

date of the request, as well as the subject of the expertise and a brief description of the content of the expertise, the amount of the expert witness's fees charged, the award for the expertise and any notes.⁴⁸ If it happens during the expert examination procedure that there is a need for extremely complex expert opinions or team expert opinions, and the expert witness evaluates that it is necessary to engage an expert witness from another profession to establish the facts, he/she is obliged to immediately inform the person who ordered the expert opinion in order to engage an expert from the appropriate profession.⁴⁹

The expert witness is obliged to adhere to the deadline set for performing the expert work, and if the expert witness cannot complete the expertise within the established deadline due to objective reasons, the expert witness is obliged to submit to the authority or the court that ordered the expert evaluation, no later than ten days before the deadline expires, a report regarding reasons why the expert witness is unable to complete the expert examination, a brief presentation of the results of the actions performed up to that point, as well as to provide the deadline by which the expert witness will end the expert examination, unless otherwise is provided by the regulations governing the rules of procedure. In more complex expert evaluations, in which a longer period for the expert evaluation is given, the expert witness is obliged to submit to the authority, i.e. the court that ordered the expert evaluation, a short report on the results of the actions performed up to that point, every month from the day of the entrusted expert evaluation, unless otherwise is provided by the regulations governing the rules of procedure.⁵⁰ Information that an expert witness learns while performing duties of an expert witness presents an official secret and as such must be kept, and such information can only be presented by an expert witness within the scope of performing duties of an expert witness.⁵¹

2.8. Tariff on rewards and reimbursements of costs for the work of expert witnesses

The rewards and reimbursements of costs for the work of expert witnesses, that belong to

them for the performed expert evaluations, are determined by the 'Tariff on rewards and reimbursement of costs for the work of expert witnesses' [19] (in the following: Tariff), adopted by the Federal Ministry of Justice, with the opinion obtained from the Federal Ministry of Finance, and according to which the courts and other authorities, in the Decision on the costs of the procedure, determine the reward and compensation for the performed expert evaluation. Unless otherwise agreed, the expert witness has the right to a reward for the performed expert evaluation and reimbursement of costs incurred in connection with the performance of the expert witness's work in accordance with the Tariff, unless otherwise defined in the regulations governing the rules of procedure. Courts and other bodies in the Decision on the costs of the procedure determine the reward and compensation for expert witness's work performed according to the Tariff that was valid at the time the expert witness's work was performed, i.e. in accordance with the agreed reward and compensation, if the agreed amount is less than that given in the Tariff, unless is otherwise provided in the regulations governing the rules of procedure.⁵²

The expert witness is entitled to a 'reward and compensation' of work expenses, and rewards for the performed expert evaluation are determined according to the type and complexity of the expert evaluation, in such a way that the amount of the reward:

- in 'less complex' expert evaluations amounts from 50.00 KM to 150.00 KM;
- in 'medium complex' expert evaluations amounts from 150.00 KM to 300.00 KM;
- in 'complex' expert evaluations amounts from 300.00 KM to 2,000.00 KM.

The degree of complexity of the expert evaluation and the amount of the reward is determined by the court, or the authority that ordered the expert evaluation, based on a free evaluation in each specific case.⁵³

Depending on the complexity of the subject matter of the expert examination, as well as in cases where special knowledge, expertise and experience are required to perform the expert examination, the reward from the Tariff, at the discretion of the court in each specific case, i.e. the decision of the authority that ordered the

⁴⁸ Article 30 of the ZV FBiH

⁴⁹ Article 31 of the ZV FBiH

⁵⁰ Article 32 of the ZV FBiH

⁵¹ Article 33 of the ZV FBiH

⁵² Article 37 of the ZV FBiH

⁵³ Article 2 of the Tariff

expert examination, can be increased up to 100%, and for work under difficult conditions (at night from 10:00 p.m. to 6:00 a.m., in extremely unfavorable weather conditions, outdoors, etc.), and for work on weekly rest days, national holidays or non-working days, the reward is increased for 50%.⁵⁴

What, in certain cases, significantly increases the costs of litigation, i.e. expert evaluation in litigation, are the so-called 'team expert evaluations'. This happens in cases where the expert evaluation is done by a team of expert witnesses, according to the decision of the court or authority that ordered the expert evaluation, and the reward and reimbursement of costs for the work of the expert witnesses belongs individually to each expert witness, and the total amount of the reward for a certain expert evaluation, regardless of the number of expert witnesses in the team, cannot be higher than three times the amount of the prize from the Tariff.⁵⁵ Regarding the principle of economy of litigation proceedings and in relation to the evidentiary action of expert evaluation, it is especially important to emphasize that when for certain types of expert evaluations, performed by legal entities, i.e. business organizations for performing expert evaluations⁵⁶, that have a price list of services, the court or authority that ordered the expert evaluation will determine the reward for the performed expert evaluation according to the price list, but even then the total amount of the reward cannot be higher than three times the amount stipulated in the Tariff.⁵⁷ The expert witness is entitled to compensation for travel costs, including compensation for transportation by means of public transport,⁵⁸ and this refers to the arrival from the place of residence or the place of stay to the place where the expert evaluation is done, as well as to the return to the place of residence or the place of stay. These costs include expenses for transportation by means of public transport⁵⁹ in the place of residence or place of

stay, and the transportation fee is for the journey made by the shortest route and the most economical means of transport, and the amount of the transportation fee is determined on the basis of the travel ticket or in another appropriate way,⁶⁰ and this reimbursement of expenses for the work of an expert witness cannot exceed 20% of the amount of the reward for the performed expert evaluation. An expert witness has the right to a daily wage and accommodation costs in accordance with federal regulations that refer to benefits that do not have the character of a salary, as well as the right to 'real' expenses regarding office materials, making written findings and opinions, etc.,⁶¹ and expert witnesses - who are permanently employed in a state body, professional institution or other legal entity that performs expert evaluations – are entitled to the compensation for unpaid wages during absence from work due to responding to a summons in the capacity of an expert witness, in the amount determined according to the regulations on reimbursement of costs to witnesses and interpreters.⁶²

3. PERSONNEL AND INSTITUTIONAL CAPACITIES OF PERMANENT COURT EXPERT WITNESSES IN THE FIELD OF MECHANICAL PROFESSION IN BOSNIA AND HERZEGOVINA

When it comes to both the personnel and institutional capacities of the permanent court expert witnesses in the field of mechanical profession, it is important to note that their organizational and legally functional work mirrors the legal system of the complex organisation of Bosnia and Herzegovina, which consists of the entities of the Federation of Bosnia and Herzegovina and Republika Srpska and the Brčko District of Bosnia and Herzegovina. This means that in the exactly same way is organized the work of permanent court expert witnesses of the mechanical profession during their participation in legal proceedings (criminal, civil, administrative or misdemeanor). Namely, just as everything else

⁵⁴ Article 3 of the Tariff

⁵⁵ Article 4 of the Tariff

⁵⁶ Article 38, Paragraph 1 of the ZV FBiH

⁵⁷ Article 5 of the Tariff

⁵⁸ According to Article 6 of the Tariff: 'The means of public transport in the sense of this tariff include: tram, trolleybus, train, bus, ship and plane.'

⁵⁹ According to Article 8 of the Tariff: 'On routes where no means of public transport operate or do not operate at a convenient time or for other reasons it was necessary not to use a means of public transport,

the amount of compensation is calculated according to the number of kilometers traveled in accordance with the federal regulations that refer to benefits that do not have the character of a salary.'

⁶⁰ Article 6 of the Tariff

⁶¹ Article 9 and 10 of the Tariff

⁶² Article 12 of the Tariff

is *de jure* divided in the state of Bosnia and Herzegovina, so too are made separate lists of permanent court expert witnesses by the Federal Ministry of Justice, the Ministry of Justice of Republika Srpska and the Judicial Commission of the Brčko District of Bosnia and Herzegovina. This means that separate lists are formed for each of these levels, without a unique 'List', which would be maintained by the Ministry of Justice of Bosnia and Herzegovina. This legal anomaly, emerged due to the absence of a single law on expert witnesses at the level of Bosnia and Herzegovina, is compensated in practice by an address book of court expert witnesses and interpreters maintained by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.⁶³

Analysis of the specific list, updated on May 31, 2023, indicates that in terms of expertise in the field of mechanical engineering prevail these subfields: engines and vehicles, energy and process engineering, production technology, machine constructions - structural engineering, wood technology, and the field of ballistics. In the specific, current state of the forensic capacities of the legal system of Bosnia and Herzegovina in the field of mechanical engineering, it is important to point out the number of 247 permanent court expert witnesses represent only individual expert witnesses, while it worries that there is no single legal institutional entity, faculty or other institution on these lists to execute more complex mechanical expert evaluations, as is the case with e.g. medical or economic expertise, and this would certainly increase the quality of findings and opinions of expert witnesses in the field of mechanical engineering, and thus concrete findings and opinions would have more credibility and stronger evidentiary force during judicial or administrative decision-making process regarding the issues related to the domain of mechanical engineering. Here has to be added that, although it is not *de facto* on the official website of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which maintains the directory of court expert witnesses and interpreters, in practice the so-called Institutional expertise on the entire territory of Bosnia and Herzegovina is provided by Zenit Center for Expertise and Assessment,

Ltd., from Banja Luka, with 375 certified expert witnesses from various fields, including the field of mechanical expertise.

4. CONCLUDING REMARKS

Unlike witnesses, permanent court expert witnesses with their findings and opinions contribute to the determination of the material objective truth in proceedings. They are experts who strive to provide answers that are the result of constant advancement in technique and technology. Permanent court expert witnesses of the mechanical profession have a significant role in the legal evidentiary proceedings conducted before the authorities in Bosnia and Herzegovina. In the concrete, current state of the forensic capacities of the legal system of Bosnia and Herzegovina, expertises needed in the mechanical field are often complex. Therefore, when it comes to the expertise, known by the law as the so-called Institutional expertise, from 247 permanent court expert witnesses, it is not commendable that this number represents all individual expert witnesses, meaning that in the field of mechanical engineering, there is no single legal institutional entity, faculty or other institution that would execute more complex mechanical expertise, as is the case with e.g. medical or economic expertise. It worries that the lists for providing the service of mechanical expertise do not contain the above mentioned institutions, since it surely would increase the quality of expert findings and opinions in the field of mechanical engineering, and thus the specific findings and opinions would have more credibility and stronger evidentiary force during judicial or administrative decision-making regarding issues related to the domain of mechanical engineering. An increase in the number of institutions that would perform institutional expertise would certainly contribute not only to the quality of the expertise but it would speed up the procedures as well, and it would shorten the time for the preparation of findings and opinions of complex mechanical expertises.

⁶³ Available at <https://vstv.pravosudje.ba/vstvfo/B/141/vjestaci>

REFERENCES

- [1] Law on Civil Procedure before the Court of BiH, Official Gazette of BiH, No. 36/04, 84/07, 58/13 and 94/16.
Law on Civil Procedure of the Federation of BiH, Official Gazette of FBiH, No. 53/03, 73/05, 19/06 and 98/15.
Law on Civil Procedure of Republika Srpska, Official Gazette of RS, No. 58/2003, 85/2003, 74/2005, 63/2007, 105/2008, 45/2009, 49/2009 and 61/2013.
Law on Civil Procedure of Brčko District of BiH, Official Gazette of Brčko District of BiH, No. 28/2018.
- [2] Law on Non-Litigation Procedure of FBiH, Official Gazette of FBiH, No. 2/1998, 39/2004, 73/2005 and 80/2014.
Law on Non-Litigation Procedure of Republika Srpska, Official Gazette of RS, No. 36/2009 and 91/2016.
Law on Non-Litigation Procedure of Brčko District of BiH, Official Gazette of BD BiH, No. 5/2001 and 36/2017.
- [3] Law on the Criminal Procedure of BiH, Official Gazette of BiH, No. 32/2003, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/ 2009, 93/2009, 72/2013 and 65/2018.
Law on the Criminal Procedure of the Federation of BiH, Official Gazette of FBiH, No. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07 and 9/09.
The Law on the Criminal Procedure of Republika Srpska, Official Gazette of RS, No. 53/2012, 91/2017 and 66/2018.
The Law on Criminal Procedure of Brčko District of BiH, Official Gazette of BD BiH, No. 34/2013, 27/2014 and 3/2019.
- [4] Law on Administrative Procedure, Official Gazette of BiH, No. 29/02, 12/04, 88/07, 93/09, 41/13 and 53/16.
Law on the Administrative Procedure of the Federation of BiH, Official Gazette of FBiH, No. 2/98 and 48/99.
Law on General Administrative Procedure of Republika Srpska, Official Gazette of RS, No. 13/02, 87/07, 50/10 and 66/18.
Law on the Administrative Procedure of Brčko District of BiH, Official Gazette of BD BiH, No. 48/2011, 21/2018 and 23/2019.
- [5] Law on Administrative Disputes of Bosnia and Herzegovina, Official Gazette of BiH, No. 19/02, 88/07, 83/08 and 74/10.
Law on Administrative Disputes of the Federation of BiH, Official Gazette of FBiH, No. 11/05.
Law on Administrative Disputes of Republika Srpska, Official Gazette of RS, No. 109/05 and 63/11.
Law on Administrative Disputes of Brčko District of BiH, Official Gazette of B BiH, No. 48/2011 and 21/2018.
- [6] Law on Executive Procedure before the Court of Bosnia and Herzegovina, Official Gazette of BiH, No. 18/03.
Law on Executive Procedure of the Federation of BiH, Official Gazette of FBiH, No. 32/2003, 52/2003, 33/2006, 39/2006, 35/2012, 46/2016 and 42/2018.
Law on Executive Procedure of Republika Srpska, Official Gazette of RS, No. 59/2003, 85/2003, 64/2005, 118/2007, 29/2010, 57/2012, 67/2013, 98/2014, 5/2017, 58/2018 and 66/2018.
Law on Executive Procedure of Brčko District of Bosnia and Herzegovina, Official Gazette of BD BiH, No. 39/2013 and 47/2017.
- [7] Law on the Expert Witnesses of the Federation of BiH, Official Gazette of FBiH, No. 49/05, 38/08.
Law on the court expertise of Republika Srpska, Official Gazette of RS, No. 74/17.
- [8] Rulebook on the conditions, method and procedure of registration on the list of permanent court experts in the Brčko District of BiH, Official Gazette of BD BiH, No. 38/16.
- [9] Development Bank of the Federation of Bosnia and Herzegovina, *Instructions on the minimum content of the findings of the court expert witnesses for the assessment of the subject of the pledge as an instrument for securing loan collection*, No. 14090-IX/14, from 10 December 2014
- [10] World Bank Group - Kingdom of the Netherlands, *Comparative analysis of expert witness's role in judiciary systems in the Western Balkans*, 2019.
- [11] European Commission for the efficiency of justice, *Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States*, (CEPEJ Guidelines), Strasbourg, 2014, available at:
https://www.coe.int/t/dghl/cooperation/CEPEJ/textes/Guidelines_en.pdf

- [12] *Guide to Good Practices in Civil Judicial Expertise in the European Union*, available at <https://experts-institute.eu/wp-content/uploads/2018/03/2016-01-07-eeee-guide-to-good-practices-egle-en-brochure.pdf>
- [13] European Parliament, *Court Expertise in Civil Proceedings in the EU*, Citizens' Rights and Constitutional Issues - National Rules and Practice - available at: [http://www.euparl.europa.eu/regdata/etude/siidid/2015/519211/iPolida\(2015\)519211En.pdf](http://www.euparl.europa.eu/regdata/etude/siidid/2015/519211/iPolida(2015)519211En.pdf)
- [14] Law on Business Organizations of FBiH, Official Gazette of FBiH, No. 23/99, 45/00, 2/02, 6/02 and 29/03.
Law on Business Organizations of RS, Official Gazette of RS, No. 127/08, 58/09, 100/2011, 67/13, 100/17 and 82/2019.
Law on Enterprises of the Brčko District of BiH, Official Gazette of BD BiH, No. 11/01, 10/02, 14/02, 01/03, 04/003, 08/03, 19/07, 34/07 and 49/11.
- [15] The Rulebook on the training of expert witnesses to perform expert witnesses' work, Official Gazette of FBiH, No. 48/07
- [16] Rulebook on compulsory insurance of expert witnesses, Official Gazette of FBiH, No. 33/06
- [17] Rulebook for the expert commission's work for the purpose of determining a proposal of list of expert witnesses, Official Gazette of FBiH, No. 48/07
- [18] Zečević E., Commentary on the Law on Civil Procedure, Logos, Sarajevo, 2004, p. 157
- [19] Tariff on rewards and reimbursement of costs for the work of expert witnesses, Official Gazette of FBiH, No. 67/15

Corresponding author:

Nermin Šehović

Email: nermin.sehovic@gmail.com

Phone: +38761184608