

Evidence in a trial is aimed particularly to proper ascertainment whether the event in respect of which the indictment was submitted by the prosecuting attorney really happened, in which manner and who has committed it. In view of the fact that the event occurred in the past, the investigative, prosecuting and adjudicating bodies cannot acquaint with it directly (i.e. in a way that they would watch the event themselves). Therefore they have to use other indirect facts that may clarify the given event retrospectively. Ascertainment of all circumstances that are material for the judgment occurs through evidence.

The quality of the evidence determines the scope and correctness of the fact finding, which substantially affects particularly the final judgment on merits. Evidence must aim to the determination how the event really happened. In words of legislation, those facts of the case should be found, in respect of which no reasonable doubts have arisen, in the scope that is necessary for the judgment. The Czech criminal procedure uses a number of means of evidence, one of which consists in expert evidence, or more precisely, an expert report requested in a situation when expertise is needed for clarification of a fact that is material for the criminal proceedings, and due to the complexity of the considered issue an expert opinion is insufficient. In such a case the investigative, prosecuting and adjudicating bodies involve an expert in the proceedings, by means of a measure.

An expert is a party different from the parties to the case and the investigative, prosecuting and adjudicating bodies, and, at the same time, an expert is an entity with special expertise and experience. All of this is the reason why these bodies appoint experts to clarify material and many times decisive issues in respect of the judgment on merits. The position of experts in the Czech criminal procedure is currently determined by three basic rules: Act No. 141/1961 Sb.<sup>179</sup>, on criminal court proceedings (The Criminal Procedure Code), which regulates, without limitation, the procedure of involving or appointing an expert and the position of experts in criminal proceedings. The provision of Section 111 of the Criminal Procedure Code then refers to other legal rules, which further elaborate the given problems, i.e. Act No. 36/1967 Sb., on experts and interpreters, as amended, which specifies the appointment and removal of experts and interpreters, performance of expert and interpreting activities and essential principles of remuneration of experts and interpreters, and further, Decree No. 37/1967 Sb., on implementation of the Experts and Interpreters Act, as amended

---

<sup>179</sup> The Collection of Laws of the Czech Republic.

by Decrees Nos. 11/1985 Sb., 184/1990 Sb. and 77/1993 Sb., which provides for further details.

Thus, with respect to the above-mentioned facts, the legal regulation of expert activity in the Czech Republic seems to be very incomprehensive, as it is fragmented into several legal rules with different legal force. Moreover, it is characterised by a large degree of rigidity, not only due to the fact that it makes great demands on specialization of experts, which are the obligatory prerequisites of the performance of the expert's function, but also by the fact that it is regulated also within the Criminal Procedure Code where the situations when the appointment of experts is possible are obligatorily determined, and, in many cases, it is impossible for the court, or the investigative, prosecuting and adjudicating bodies, to consider this point themselves in the respective particular case.

Nevertheless, not only the issue of adoption of a new comprehensive regulation on the problems of expert activity is the only thing that would push the regulation of the expert activity in the Czech Republic in the proper direction and free the expert evidence, or expert reports, of the label of non-objective and "manipulative" means of evidence the results of which increasingly reflect the demands of the parties to criminal proceedings, with respect to their position in the respective particular case. An institute of expert opinion should be much better developed, which is used by the investigative, prosecuting and adjudication bodies to a large extent and with increasing frequency in resolving more simple expert issues in order to prove less serious crimes. Such provisions would be advisable that would deal with the circumstances under which this institute will be preferably and obligatorily requested, what subject-matter and formal elements it should have and what expert requirements the author of the expert opinion himself must have. Neither the law exactly defines how the investigative, prosecuting and adjudicating bodies should proceed if the expert opinion is incomplete, confused or intrinsically inconsistent, i.e. how the mentioned defects can be excluded in proceedings before court.

Other very problematic areas, not dealt with by the existing regulation, include, without limitation, the issues referring to improvement of the quality of the experts' work, i.e. extension and specification of the prerequisites for appointment of experts, setting of stricter conditions for their activity and their striking out from the register of experts. Neither the applicable legislation deals with the issue of compulsory liability insurance in respect of damage caused by performance of expert activity. So far, the general liability of an expert for damage according to the Civil Code is applied. However, this regulation brings a number of interpretative problems and is wholly insufficient. In the future, the issue of supervision over

expert activity should not be neglected if some doubts about an expert's competence arise. I would appreciate the incorporation of the duty of perpetual education of experts, as the expert activity is highly qualified professional activity, which demands constant renewal of knowledge and skills in accordance with the development of the specialisation and scientific knowledge. In my opinion, no less important is, according to designed law, considering the elimination of the existing, completely unacceptable situation in the area of expert institutes, where private entities are entered in the register of institutes without checking what particular persons will draw up expert reports, so that the liability of the individual persons for expert reports can be better supervised.

The regulation of expert activity in Slovakia, for instance, could be a source, or an example, for the author of the new legal regulation of expert activity in the Czech Republic, as the purpose and understanding of law as such is very close to us, not only thanks to our common past, similarity of cultures, mentality and language, but also due to similar social and political development. We have a common basis in a number of individual legal branches, and the same applies to the area of the criminal law and regulation of expert activity.