

## **8 Resumé**

If we sum up the findings from the stipulated thesis, then it can be stated that current European legislation does not regulate the field of expertise in a uniform manner. In the Czech Republic, the activity of the expert witness is regulated for in the Act on Expert Witnesses and Interpreters as amended by the implementing decree of the Ministry of Justice for implementation of the Act on Expert Witnesses and Interpreters and Organisational instruction of the Minister of Justice, which regulates procedure on handling of applications for registration in the list of institutions qualified to perform the activity of an expert witness. The purpose of this regulation is to ensure due performance of the activity of expert witnesses in proceedings held with public authorities, as well as the activity of expert witnesses performed in accordance with the legal acts of natural persons and corporate entities. Regulation is provided for the conditions for performance of the activity of expert witnesses, the rights and obligations of expert witnesses, conditions for the activity of institutions providing expert witness services, the competence of the Ministry of Justice and regional courts whilst performing state administration of expert witness services and liability for administrative offences whilst performing the activity of an expert witness. Only expert witnesses registered in the list of expert witnesses may perform the activity of an expert witness; institutions also perform the activity of an expert witness. Persons not registered in the list of expert witnesses may only be appointed as expert witnesses in proceedings held with public authorities in exceptional cases.

The Czech Act on Expert Witnesses and Interpreters does not specify or prioritise any area or expert field. In accordance with this act, any specialist in any profession may be an expert witness if the situation so requires. It thus relates to all fields where it is necessary to submit an expert opinion, such as in medical, technical, psychological and also in economic fields. Authorisation to perform the activity of an expert witness is currently granted by the Ministry of Justice, or the respective regional court. Czech

legislation for the activity of an expert witness in international private law is especially contained in the Act on International Private and Procedural Law (from 1 January 2014, the new Act on International Private Law) and individual treaties on legal assistance which the Czech Republic is bound by.

International regulations and the regulations of the European Union for the field of expert witnesses is especially enshrined in the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, the Regulation on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, the Treaty on the Functioning of the European Union, the Directive of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, the Directive of the European Parliament and of the Council on the recognition of professional qualifications and the Directive of the European Parliament and of the Council on service in the internal market. The Hague Evidence Convention allows for request by one signatory country which is requesting evidence to be sent to another signatory country where evidence is to be found without using consulatory and diplomatic paths. According to this convention, the act of requesting cannot lead to the obligation to settle fees or costs, regardless of their nature. The country which the request is made to may however demand of the country making the request compensation for fees paid to expert witnesses and costs relating to use of special forms requested by the country making the request.

In accordance with the Regulation on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, taking of evidence is performed by the clerk of the court or other person, for example an expert who is determined in accordance with the law of the member country of the court making the request. If an expert opinion is required, the court which the request is made to may demand that the court making the request provides an appropriate guarantee or deposit for

expected costs before handling the request. In other cases, a guarantee or deposit may not be imposed as a condition for handling of the request.

Typical for continental law (with the exception of Cyprus) is legal regulation of international private law in the form of binding normative acts. The tradition of common law is especially focused on regulation of matters regulating to a procedural regime with an international element. From the point of view of the Czech Republic, there are 50 effective treaties where the standing of expert witnesses in private law cases is regulated for. However there are in total many more treaties in effect. The Czech Republic has currently concluded treaties on legal assistance (also called consular treaties, arbitration treaties, extradition treaties and treaties on transfer of sentenced prisoners etc.) with 71 countries (even several types with some of them). However, the standing of expert witnesses in private law matters is not resolved at all in certain treaties on legal assistance in civil, family and criminal matters. In treaties on legal assistance, there are historically three treaties which constitute legal regulation for successor states which were created by separation or dissolution of the original ones. These are: Great Britain (Australia, the Bahamas, Fiji, Gambia, South Africa, Canada, Kenya, Lesotho, Nauru, New Zealand, Swaziland, Tonga and Great Britain), the former Soviet Union (Belarus, Georgia, Kyrgyzstan, Moldavia and Russia) and the former Yugoslavia (Bosnia and Herzegovina, Montenegro, Croatia, Kosovo, Macedonia, Slovenia and Serbia). This means that half of all treaties which regulate the standing of expert witnesses in private law matters are thus made up of these original three treaties.

The standing of the expert witness can be specified in individual treaties on legal assistance with the aid of several principles. These principles may differ slightly from treaty to treaty. Some treaties explicitly mention examination of an expert witness or elaboration of an expert opinion, some do not. In terms of a request, the immunity of performance of the activity of the expert witness within the territory of a different country is regulated for in treaties on legal assistance in terms of scope as personal,

substantive or in terms of time. The sphere of persons which immunity relates to is most frequently determined according to domicile, nationality or residence address. In most cases, the immunity of expert witnesses is similar to that in the case of witnesses. From a substantive point of view, immunity is understood to mean that it is forbidden to punish a summonsed expert witness for facts committed before he or she crosses the border of the country making the request. Some treaties include punishments which may already have been imposed. In some cases, the immunity of expert witnesses is also guaranteed in relation to acts performed whilst elaborating an expert opinion. The time limit for immunity is limited by the treaties to a period of seven to fifteen days from the time when it was communicated to the expert witness that his or her presence in the country making the request is no longer necessary. There are exceptions to this rule (prevention of expert witness leaving the country, voluntary return).

Any threat of use of coercion by one country against the citizen of another country is regarded, from the point of international public law, as infringement of sovereignty and this is why in several treaties on legal assistance this behaviour is explicitly forbidden for cases when the expert witness fails to make an appearance in court when summonsed. Sometimes this principle also relates to situations when the expert witness is already present within the territory of the country making the request and instructions for procedural acts are specified. According to some treaties on legal assistance, the expert witness may act in the capacity as an official, this being in cases when the document confirms that no further verification from the other country which is party to the treaty is necessary.

The right of the expert witness to reimbursement of his or her costs and the fee for the expert witness is enshrined in most treaties on legal assistance. On the basis of his or her request, it is possible on the basis of most treaties on legal assistance to provide a partial or full deposit. Remittance of a deposit is, in the case of certain treaties, subject to introduction of expert evidence. Sometimes there is direct regulation

stipulating that the summons for the expert witness must stipulate which reimbursement will be provided to the expert witness. In some cases, costs for the expert witness are excluded from the other costs and are paid directly by the country making the request or the country introducing the expert evidence.