

# **A Study on Court-Appointed Expert examination in Montenegro**



**For the publisher: Center for Civil Liberties,  
NGO CEGAS**

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**Printing: Print  
run: 200pcs**

**Podgorica, oktobar 2024.**



**PODRŠKA EU INTEGRACIJAMA CRNE GORE  
– ZA NEZAVISNO I PROFESIONALNO PRAVOSUĐE  
KAO KLJUČNI PREDUSLOV!**

Projekat „Podrška EU integracijama Crne Gore – za nezavisno i profesionalno pravosuđe kao ključni preduslov“ realizuje Centar za monitoring i istraživanje CeMI, u saradnji sa Centrom za istraživačko novinarstvo Crne Gore (CIN-CG) i Centrom za građanske slobode (CEGAS). Projekat je finansiran od strane Evropske unije kroz Evropski instrument za demokratiju i ljudska prava (EIDHR), a kofinansiran od strane Ministarstva javne uprave Crne Gore.

  **Finansira  
Evropska unija**

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## INTRO

The Center for Civil Liberties (NGO CEGAS) conducted a survey on the position of court-appointed expert witness and the manner of court expertise in Montenegro, for 2023, as part of the project "Support to Montenegro's EU Integration – for an Independent and Professional Judiciary as a Key Precondition!", which we are implementing with partners, the Center for Investigative Journalism of Montenegro (CIN Montenegro) and the Center for Monitoring and Research (CEMI).

Analyzing the work and practice of court-appointed expert witness over the years, as well as the normative framework, it can be seen that there has been no necessary change in both the law and the practice, from the method of selection of court experts, monitoring their work, control, initiating proceedings before the Commission for Experts within the Ministry of Justice. In the legal field, expert witnesses provide decision-makers with clear and substantiated answers to specific and complex issues on which they have been consulted. Their services are increasingly in demand due to the increased complexity of social relations and the improvement of research methods related to scientific development; In this way, they help to make justice more efficient and effective.

"Although expert witnesses and expert reports have traditionally been used as evidence in all codes of continental law, experts have a different role - as very thoughtfully pointed out by Ms. Griss, former President of the Supreme Court of Austria, during the Eurexpertise project - that goes beyond the role of witnesses: experts establish facts and draw conclusions based on those facts, while witnesses do not have the right to draw conclusions and must limit themselves to testifying about what they have seen and heard. Thus, although - by law and in all European countries - the conclusions of expert witnesses are not binding on judges, their opinions usually have a decisive influence on the outcome of disputes and the quality of decisions. \*

With timely responses from the Ministry of Justice, based on our requests for free access to information, in cooperation with the Association of Expert Witnesses of Montenegro, we managed to come up with a platform that will provide clear conclusions and recommendations for improving the system of court-appointed expert witness in the judiciary of Montenegro, with recommendations for improvement in this field.

# National and International Regulatory Framework

The Law on Court-appointed expert witness of Montenegro (Official Gazette of Montenegro, No. 054/16 of 15.08.2016) was adopted in 2016, as part of the National Judicial Reform Strategy for the period 2014-2018, in the hope that the rule of law in this part will be ensured more permanently. Ensuring quality, professionalism, timeliness and impartiality, in accordance with the Code of Ethics, with the possibility of constant control of the work and incentives for the improvement of the work of experts, should have occurred through the full implementation of the said law. The European Union and the Council of Europe have recognized the importance and role of court-appointed expert witness in the judicial system, as well as the fact that many judgments in the Balkans are "written by experts", and for these reasons they have resorted to the development of a guide to best practices in the work of court experts.

These include the Guidelines on the Role of Court-appointed expert witness in Court Cases of the Member States of the Council of Europe (CEPEJ Guidelines) and the Guide to Good Practice in Expertise in Civil Proceedings in the European Union (EGLE), by the European Institute of Expertise and Expertise (EEEEI) and the European Commission's Directorate-General for Justice and Consumer Protection.

Both Guides are based on the way court-appointed expert witnesswork, their expertise, method of control and impact on the rule of law. The guidelines and recommendations given in them were supposed to be the basis for improving the field of expert witnesses in Montenegro as well. According to them, we should think about the way of controlling the work of court experts, due to the ambivalence of their position, they are chosen by the one who pays them (i.e. approves their payment), and when a permanent connection between the judge and the court expert is created, the question arises as to who makes the decision in that case.

**Here, special attention must be paid to the impartiality and method of selecting the expert, along with the costs and complexity of the entire work.**

The conclusions of these guides boil down to:

- establishment of public registers of experts, with verification of competence, ethics and reputation of applicants;

Creating a statute for experts, regardless of whether the experts are appointed by a judge or hired by the parties to give their opinion in court. This statute would specify the obligations of experts to the court and the parties, with particular reference to compliance with the obligations of independence and impartiality, as well as the implementation of the adversarial principle;

Strengthening the role of judges in all aspects, to enable judges to effectively oversee expert reports and address any problems that may arise;

For more information on court experts, see also Court Expertise in Civil Procedure in the EU: National Rules and Practices published by Policy Department: Citizens' Rights and Constitutional Affairs, European Parliament; available at:

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519211/IPOL\\_IDA\(2015\)519211\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519211/IPOL_IDA(2015)519211_EN.pdf) and CEPEJ's Study on the Role of Expert Witnesses in the Judicial

Establishing a standard format for expert reports to facilitate the verification of their scientific merit;

-Establishment of a uniform procedure for expert reports which, in cross-border disputes or disputes with cross-border implications, would replace national procedures and thus facilitate the tasks of experts from other countries.

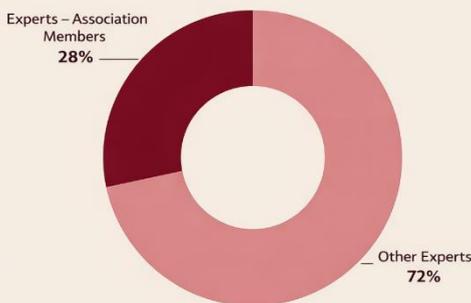
# The Law on Court-Appointed Expert Witnesses and Its Implementation

The Law on Court-appointed expert witness (Official Gazette of Montenegro, No. 054/16 of 15.08.2016) regulates the conditions for performing expert opinions, the procedure and manner of appointment and dismissal, as well as all rights and duties of expert witnesses related to their work, as well as other issues of importance for their work. Expert witness in the terminological sense is a means of evidence, and as such is provided for by procedural laws (e.g. Law on Administrative Procedure, Criminal Procedure Code, Civil Procedure Code of Montenegro). Thus, in the procedural sense, the obligations of the expert in the procedure are specified, so the determination of the expert opinion, the order on the expert testimony, the duty of the expert witness and the procedural penalties, persons who cannot be elected as expert witnesses, the procedure of expert examination, the examination of the subject of the expert opinion, the entry of findings and opinions into the record, the expert opinion by a professional institution or state authority, the record of the expert opinion and the right to view it, are carried out, re-expertise, supplementary expertise as well as other specifics of expertise depending on the case (toxicological expertise, expert examination of corpses, serious bodily injuries, psychiatric expertise, expert examination of business records, etc.).

It is clear that the treatment of evidence depends on the expert, and then, it seems essential, the judicial outcome of the procedure itself. A court expert, in addition to meeting the formal and material requirements, must be a person of high professional and moral qualities, who will confidently bring a true finding and opinion, which corresponds to the subject of the expert opinion and the expert opinion procedure itself.

He is the most expert associate of the judge and, in accordance with his knowledge and skills, in relation to the submitted subject of the expert opinion, he comes to the truth, which can conclude a process or open it further, depending on the outcome of the findings and opinions.

**TOTAL NUMBER OF COURT-APPOINTED EXPERTS IN RELATION TO THE NUMBER OF MEMBERS OF THE ASSOCIATION OF COURT-APPOINTED EXPERTS AND THE INDEPENDENT ASSOCIATION OF COURT-APPOINTED EXPERTS IN 2023**



**ACCORDING TO THE LIST OF EXPERTS OF THE MINISTRY OF JUSTICE, IN 2023, THERE WERE**

**701**

**COURT-APPOINTED EXPERTS IN MONTENEGRO**

ACCORDING TO THE LIST OF COURT-APPOINTED  
EXPERTS OF THE MINISTRY OF JUSTICE, IN 2023,  
THERE WERE

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LEGAL ENTITIES

According to the Law on Court Experts\*, the expert witness procedure is described as a professional activity, on the basis of which the necessary expert knowledge is provided to the authorized body conducting the procedure, where, on the basis of this and other evidence, the authority establishes, evaluates and clarifies legally relevant facts. An expert witness is obliged to respond to the summons of the court, prosecutor's office or other authority and respond to the entrusted task, i.e. Within a certain period of time, give your opinion and opinion. **Both natural and legal persons may be selected as an expert.**

Here it is necessary to stop and point out the need to normatively elaborate the engagement and status of a natural and legal person, as someone who conducts expert testimony. It is especially important to elaborate in detail the manner of engagement of a legal entity and its obligations.

\*The Act on Court Experts is available at:

[https://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines_en.pdf)

- According to the Law on Court Experts, in addition to the fulfillment of the general conditions for work, provided for by the Law on Civil Servants and Employees (Official Gazette of Montenegro, No. 2/2018, 34/2019 and 8/2021), special conditions are also necessary.
- General conditions concern: Montenegrin citizenship, at least 18 years of age, medical fitness to perform the duties of the position, has passed the professional exam for work in state bodies, has not been convicted of a criminal offense that makes him unworthy to work in state bodies.
- Special conditions concern that: has a higher education, VII1-level qualification of education; has at least five years of work experience in the profession; and possesses professional knowledge and practical experience in a specific field of expertise.

Exceptionally, a person with at least secondary education and 10 years of work experience in the profession may be appointed as an expert witness, if there is not a sufficient number of experts in a certain field.

In the case of legal entities, the expert opinion can take place with the fulfillment of special conditions.

A legal entity may perform expert testimony if it meets the following conditions, namely that it is registered in the Central Register of Business Entities for expert opinion for the relevant field and has an employed expert who has been appointed in accordance with this Law.

**The question arises as to how and in what way it is possible to control the work of an expert witness who has been dismissed from the position of a court expert, and in fact performs the work of expert witness through another authorized person, in a legal entity, where he has already performed expert testimony.**

The appointment and dismissal of court-appointed expert witness shall be carried out by the Commission for Expert Witnesses, which shall be established by the Minister of Justice and shall consist of one member from the ranks of judges, state prosecutors, two members from the ranks of court-appointed expert witness and one member from the state administration body in charge of judicial affairs, while the President of the Commission shall be elected from among judges and prosecutors.

The need for experts in a particular area is expressed by court presidents, heads of state prosecutor's offices and elders of the bodies conducting the proceedings. This list shall be submitted to the competent Ministry, on the basis of which the Commission for Experts shall determine the justification for the need for experts in a particular field.

The Commission for Experts, in accordance with the current Law, is established by the Minister of Justice and consists of five members, one member from the ranks of judges; one member of the Attorney General's Office; two members from the ranks of court-appointed expert witness and one member from the state administration body in charge of judicial affairs, i.e. Ministries.

The President of the Commission shall be appointed from among the judges or state prosecutors. A member of the Commission from the ranks of judges shall be appointed at the proposal of the General Session of the Supreme Court of Montenegro (hereinafter: the Supreme Court), a member from the ranks of state prosecutors at the proposal of the session of the Supreme State Prosecutor's Office, members from the ranks of court-appointed expert witness at the proposal of the Association of Court Experts, and a member from the Ministry at the proposal of the Minister of Justice. The Commission is appointed for a term of four years.

Professional and administrative tasks for the needs of the Commission are carried out by the Ministry. The Commission shall adopt the Rules of Procedure.

Professional knowledge and practical experience, when first obtaining the title, is assessed by a team of at least two experts from a given profession and one judge and one state prosecutor. And this team is formed by the Commission for Experts. When extending the license for expert witnesses, where the candidate is reappointed as an expert witness, it is sufficient to submit to the Commission for Expert Witnesses the opinion obtained on professional work by the courts, prosecutor's offices and other competent authorities conducting the procedure, as well as the opinion of the Association of Court Experts.

Out of a total of 7 sessions of the Commission for Expert Witnesses, Ministry of Justice, on 5 of them, the Association of Court-appointed expert witness had a proposal to accept more court experts, because they are not members of the Association of Court Experts, but since their proposal is not binding, court-appointed expert witness also pass these disagreements of the members of the Association of Court Experts.

The decision on the appointment of court-appointed expert witness shall be made by the Commission, as well as on his dismissal. A motion for the dismissal of an expert witness may be submitted by the president of the court, the head of the state prosecutor's office, the head of another body conducting the proceedings, the judge and the state prosecutor in whose case the expert witness acted.

The Commission may, for the purpose of assessing the expertise of an expert against whom the procedure for dismissal has been initiated, establish an expert commission of three members from among the appointed experts in the field in which the expert is an expert.

An expert has the right to comment on the facts and circumstances on which the motion for dismissal is based, as well as the right to counsel.

LAW ON COURT-APPOINTED EXPERT WITNESS OF THE CG

The appointed expert shall be entered in the Register of Court Experts\* and shall take an oath before the Minister of Justice.

### **NUMBER OF COURT-APPOINTED EXPERTS**

#### **BY FIELD OF EXPERTISE**

<b>147</b>	ARCHITECTURE, CIVIL ENGINEERING, GEODESY, GEOLOGY
<b>30</b>	ELECTRICAL, TELECOMMUNICATIONS, COMPUTER SYSTEMS
<b>206</b>	FINANCE AND COMMERCIAL
<b>73</b>	MECHANICAL ENGINEERING AND TRANSPORT
<b>107</b>	MEDICINE – FORENSIC MEDICINE
<b>64</b>	AGRICULTURE, MINING AND FORESTRY
<b>51</b>	OTHER FIELDS

The register of court experts is kept by the Ministry of Justice, <https://www.gov.me/clanak/azurirani-spisak-sudskih-vjestaka-azuriran-na-dan-24-July-2024>, and it is enlarged with each subsequent update, which shows a significant need for this profession, as well as the desire for business engagement in the

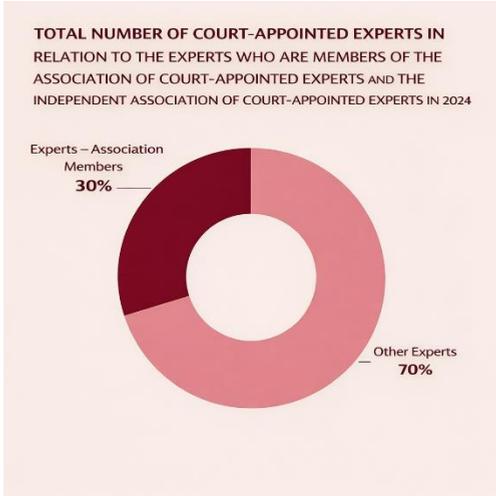
### **FIELDS WITH ONLY ONE COURT-APPOINTED EXPERT**

- Copyright Law Field
- Antiquities and Ethnology
- Forensic Anthropology
- Digital Evidence Field, Mobile Phone Forensics and Forensic Photography
- Graphic Technology Field
- Biology Field
- Physico-Chemistry Field
- Physico-Chemistry and Environmental Protection Field
- Cultural Heritage Field
- Chemical Engineering, Biotechnology and Environmental Protection Field
- Metallurgical, Thermal-Power Engineering and Environmental Protection Field
- Technology, Hydro-Technology and Environmental Protection Field
- Protection at Work, Explosives and Pyrotechnic Protection Field
- Protection at Work and Environmental Protection of Human Persons and Property Field
- Protection at Work Field
- Protection at Work and Fire Protection Field (Explosives and Pyrotechnics)

### **FIELDS WITH ONLY TWO COURT-APPOINTED EXPERTS**

- Archivistics Field
- Forensic Genetics Fields
- Graphology-Grafoscopy Field

Since there is no legal obligation for experts to become members of the Association of Experts, it will be clear that in this sense there are no mandatory trainings, which are organized in front of the Association, and it must be noted that only a small number of them are part of this Association.



ACCORDING TO THE LIST OF COURT-APPOINTED EXPERTS OF THE MINISTRY OF JUSTICE, IN 2024, THERE WERE

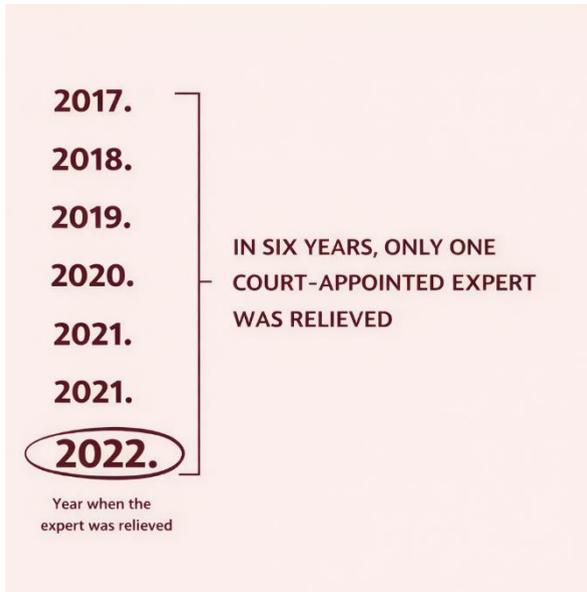
**12**

LEGAL ENTITIES

If only one smaller number (percentage) is part of the Association, then the question arises of the purpose of the Association as well as its position in the system, as well as the scope of supervision and control by the administrative bodies, i.e. the Ministry of Justice.

This opens up the possibility that by changing the existing law, associations of court-appointed expert witness will be recognized differently. None of the associations that exist today can have a status higher than any other.

We can freely say that there is only a formal one, if we are sure, that in six years, after the initiation of proceedings by the head of one of the courts, only one expert has been dismissed\*, while judges and prosecutors do not resort to examining the quality of the expert's work.



Regardless of the legal mechanisms provided for by the Law (Article 31, ZSV, "An expert shall be dismissed if: he or she requests it; ceases to meet the requirements for the examination; has been sentenced to imprisonment or has been found guilty of an act that renders him unworthy to perform expert testimony; And he has been given a security measure prohibiting him from performing activities in the area in which he acquired the title of expert; he/she has been deprived of or restricted legal capacity on the basis of a court decision; it has been established that the expert witness has lost his ability to work, in accordance with the law; and irregular or unprofessional performs entrusted expertise.

It shall be considered that an expert witness performs an expert opinion in an improper manner if he unjustifiably refuses to provide an expert opinion, does not respond to the summons of the court, the State Prosecutor's Office, or another body conducting the proceedings, fails to perform the expert opinion within the time limit set by this Law, as well as in other cases prescribed by this Law.

It is considered that an expert witness performs expert testimony incompetently if he gives incomplete, unclear, contradictory or incorrect findings, as well as if he gives an opinion that does not correspond to professional standards in the field of expert examination."), in 2023, only one judge initiated a review of the work of one expert witness, and **in the period from 2017 to 2022, based on CEGAS research, only one court expert was dismissed.**

# **Cooperation between the Association of Court-Appointed Expert Witnesses and the Ministry of Justice**

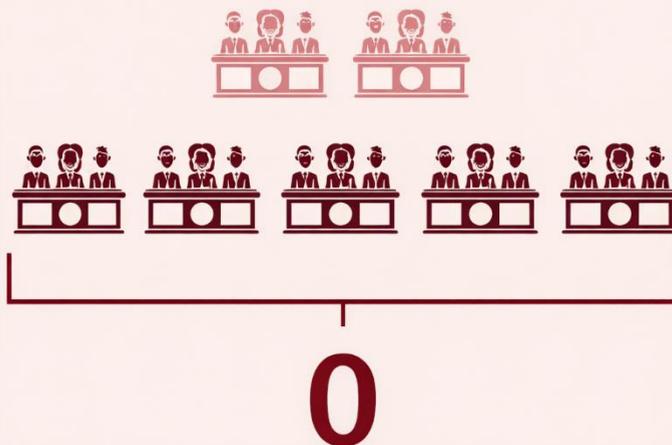
According to the Law on Court Experts, professional development of expert witnesses can be organized through the Association of Court-appointed expert witness and other professional associations and institutions. Although the General Program of Professional Development of Expert Witnesses is determined by the Commission for Expert Witnesses, it must not be forgotten that numerous trainings are organized by the Association of Expert Witnesses itself, and in this sense it is significantly more active, as well as the Independent Association of Court Experts, which had one training during 2023. There are many legal ambiguities in this section.

The Association of Court-appointed expert witness was founded in November 2000 and has 172 members. Members of the association are from all professions and are members who regularly attend training for improvement, depending on the areas they deal with. In addition to the obligation to improve, members during their professional engagement, are also responsible for their work to the formed Ethics Committee. If we return to the legal framework, which precedes this unit, when re-selecting an expert witness (i.e. renewing the license), it is important to obtain a positive opinion from the Association of Experts.

The Center for Civil Liberties (NGO CEGAS) compared the number of court-appointed expert witness in the Register of the Ministry of Justice with the number of active members from the Association of Court-appointed expert witness (see pages 11 and 18), and came to the question - to what extent the cooperation between the Ministry of Justice and the Association of Expert Witnesses justified the

expectation, or the possibility of a different status of the Association.

OUT OF **SEVEN HELD** COMMISSION SESSIONS FOR EXPERTS, IN FIVE THERE WERE COMPLAINTS OF THE ASSOCIATION OF COURT-APPOINTED EXPERTS



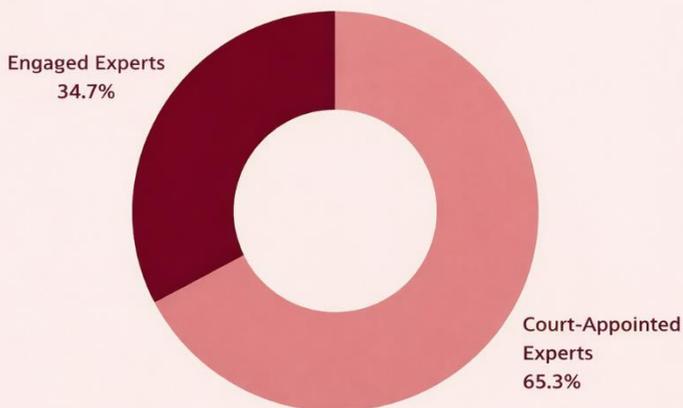
APPROVED COMPLAINTS OF THE ASSOCIATION OF COURT-APPOINTED EXPERTS

Based on the analyzed responses to the Request for Free Access to Information, within which we received all the Minutes from the sessions of the Commission for Expert Witnesses, the Ministry of Justice, a total of seven minutes, from seven sessions, in five Minutes, representatives of the Association of Court Experts, suggested for certain experts that they cannot be elected, because they are not members of the Association, and therefore cannot obtain a positive opinion.

If we return to the current legal solution, we must underline that court-appointed expert witnesses are not obliged to be members of the Association, which we consider a bad solution, especially if we take into account that the Law still forces them to obtain an opinion when electing to the title of expert witness, or re-election, but since the opinion of the Association is not necessarily binding, it is not surprising that the number of members is small.

Without the necessity of attending mandatory trainings, conducted by the Association of Court Experts, and then accountability before the Commission for the Code of Ethics, within the Association itself, we can hardly have a full picture of court experts, who are always under the radar in Montenegro.

### TOTAL NUMBER OF COURT-APPOINTED EXPERTS IN RELATION TO ENGAGED EXPERTS IN 2023



\*Only includes natural persons; Number of legal entities is 4

CEGAS also notices the problem of hiring exclusively certain experts, where a bond of trust has been created between prosecutors, judges and selected court experts, where the invitations for expert opinions should be expanded, and then create an image of equal opportunities for participation, in addition to the legal control of those who conscientiously and professionally do this type of work in this way. From those who are experts only on paper.

The graph was made on the basis of lists from SAPA, received from the Judicial and Prosecutorial Council

## I N T E R V I E W S :

### Marko Lakić, President of the Association of Court

**How do you see the field of court-appointed expert witness in Montenegro, bearing in mind that out of the total number of members, about 700 of them, only 170 are members of the Association of Court Experts, which you chair?**

I see the situation in the field of court-appointed expert witness and expertise in Montenegro as very unregulated. I believe that the biggest reason for this is the current legal solution, which I believe is bad in almost all parts. As potential reasons for such a ratio of the number of members of the Association in relation to the total number of court experts, I see the following:

- The Association of Court-appointed expert witness of Montenegro is a non-governmental non-profit organization. The management of the Association has absolutely no remuneration for its work, i.e. Engagement is on a volunteer basis. For this reason, currently, as well as previous management of the Association, dedicate themselves to the Association when they complete their other private and business obligations. Due to such an approach, there are not too many activities of the Association that would attract a larger number of court experts.
- Given that neither the management nor the membership receive any compensation for their work in the Association, there are few who will contribute without a certain compensation.
- With the first Law on Court Experts, the Association had more powers, which were abolished by the second Law (from 2016).
- The Association of Court-appointed expert witness may initiate proceedings only against court-appointed expert witness who are members of the Association. The question arises why an expert would pay an annual membership fee if he is not obliged to do so, and a liability procedure can be initiated against him. In this way, experts who are not members of the Association avoid potential responsibility for their work.

- In the previous period, the Ministry of Justice and the Commission for Expert Witnesses further rendered the existence of the Association meaningless and contributed to the reduction of the number of members of the Association.

## **Where do you see the key problems and what is your status in the Commission for Experts?**

I'm one of the five members of the Expert Committee. In a large number of cases, I was too loud, but I respected the decision of the majority, although I believe that it is wrong and that it greatly contributes to the poor situation in the field of expertise in Montenegro.

The law clearly states that whoever hires an expert "as a rule" should take care of the equal representation of all experts. No one follows this rule. I'm not going to comment on potential reasons.

**We have read several times from the Minutes of the Work of the Commission for Expert Witnesses for 2023 how much you disagree with certain appointments, precisely because of the fact that experts do not belong to the Association of Court Experts, and hence the lack of opinion of this Association as a whole?**

Time has shown that it happens that experts write things in their Expert Report that are completely contrary to the real situation and the truth. They are not responsible for such things, and when something like that is discovered, the matter is covered up.

## **In what part should the Law on Court-appointed expert witnesses be amended?**

The law must be amended in every part:

- First Placement
- Re-election
- Education
- Responsibility
- Obligation to be a member of the Chamber
- Compensation for the work of an expert witness

## **What's your relationship with the Ministry of Justice?**

The cooperation between the Association of court-appointed expert witness and the Ministry of Justice is excellent in a professional sense. Logically, we do not fully agree, but the agreement is to respect the decision of the majority. In this regard, I must emphasize that despite the great resistance of senior officials of the Ministry of Justice and previous ministers, Minister Bozovic supports the formation of the Chamber of court-appointed expert witness. The obligation to be a member of the Chamber is the basis of the responsibility of all experts. In the current situation, the expert witness who is called to account leaves the Association and at that moment ceases to be responsible to anyone.

**How do you see, in the normative sense, the regulation of the field of court-appointed expert witness in Montenegro?**

The conditions for the performance of expert opinions, the procedure for the appointment and dismissal of court-appointed expert witness, i.e. the registration of legal entities in the Register of Legal Entities for the performance of expert opinions, the rights and duties of expert witnesses, as well as other issues of importance for their work are regulated by the Law on court-appointed expert witness of 2016.

**To what extent is the work of the Ministry of Justice, within the Commission for Expert Witnesses, active in this field, in relation to the number of sessions and the overall work?**

An expert is appointed and dismissed by the Commission for Expert Witnesses, which is formed by the Minister of Justice, and an important role in the development of the profession of court-appointed expert witness is played by the Association of court-appointed expert witness, as a guild association.

In accordance with the competencies defined by law, the Commission for court-appointed expert witness regularly holds sessions and decides on issues of appointment and dismissal of court experts, and the Ministry of Justice keeps and regularly updates the Register of court-appointed expert witness and the Register of Legal Entities for court-appointed expert witness, which is publicly published on the website of the Ministry of Justice.

**How often are professional trainings for court-appointed expert witness in specific fields organised by the competent ministry?**

The Law on court-appointed expert witness prescribes that the professional development of court-appointed expert witness may be organized by the Association of court-appointed expert witness and other professional associations and institutions.

These trainings are conducted on the basis of the General Program of Professional Development of Experts, which is determined by the Commission for Experts, and the organizers of the trainings must adopt special programs of professional development. Therefore, the trainings are not conducted by the Ministry of Justice, but by the Association of court-appointed expert witness and other professional associations and institutions.

**What reasons would you give for the fact that during court expertise in certain areas, we often see the same faces, regardless of the existence of other experts from the database?**

According to the Law on court-appointed expert witness, for expert witness testimony in a particular case, the court, the State Prosecutor's Office, or another body conducting the procedure, as a rule, appoints an expert who resides in the territory of that court, the State Prosecutor's Office, or another body conducting the procedure, taking into account that experts in the same field are equally engaged. Therefore, the proportional representation of experts is provided as a rule, and not as an obligation, since the engagement of experts is conditioned by the number of experts in a certain area, their professional qualifications, the complexity of the case and other circumstances.

**Judges and prosecutors do not like to resort to initiating the procedure of dismissal of certain experts, what do you think is the cause?**

When re-appointing court-appointed expert witness, the Commission for Expert Witnesses in the Decision-Making Procedure at the Request of an Expert Witness shall determine the professional knowledge and practical experience for a particular field of expertise by obtaining an opinion on their professional work from the court, the State Prosecutor's Office, or another body conducting the proceedings, whose seat is in the place of residence of the expert, as well as an opinion from the Association of court-appointed expert witness. In all previous procedures for the re-election of court-appointed expert witness, the Commission has found that the opinions submitted by the competent judicial authorities have been positive.

Bearing in mind that the current implementation of the Law on Court-appointed expert witness has pointed to numerous normative shortcomings in relation to the procedure for appointing court experts, determining their responsibility, professional development, as well as other issues of importance for the work of expert witnesses, the Judicial Reform Strategy 2024-2027 (adopted by the Government of Montenegro in May 2024), within the strategic objective of Strengthening Independence, impartiality and accountability of the judiciary, as a special operational objective is to strengthen the system of disciplinary responsibility of judicial professions, including court experts.

### **Can we expect a new law on court-appointed expert witness in Montenegro and when?**

In this regard, the Action Plan for the Implementation of the Judicial Reform Strategy 2024-2025, as a special activity, envisages the drafting of the Draft Law on Amendments to the Law on Court Experts, with the aim of systematically improving legal solutions in this area. The process of consulting the interested public in the process of drafting this regulation is underway, as well as the formation of a Working Group that will work on the drafting of this regulation, which will include representatives of judicial authorities, advocacy, professional associations of court experts, as well as the civil sector.

### **How do you see the improvement of the field of court-appointed expert witnessin Montenegro?**

I consider the improvement of the field of court-appointed expert witnessin Montenegro to be a key step towards strengthening the judicial system and more efficient administration of justice. Court-appointed expert witnessplay a crucial role in interpreting technical and professional issues that go beyond the legal expertise of prosecutors and judges. In order to further improve this field, it is necessary to work on several fronts, and I especially emphasize the need for clearer regulation that would more precisely define the role, rights and responsibilities of expert witnesses. This would include revising the legal framework to ensure the impartiality, expertise and accountability of all court experts.

In this direction, recognizing the problems in this area, together with the Ministry of Justice and the Association of Court-appointed expert witnessof Montenegro, we have started working on improving this area through a normative framework and improving practice in the work and selection of experts.

I also believe that the effectiveness of expert witnesses can be increased through better cooperation between judicial institutions, state authorities and the private sector. This collaboration would facilitate access to key information and resources, which would contribute to more accurate and faster expertise.

### **When can we expect court-appointed expert witnessin the Report on the Work of the Prosecutorial Council and the State Prosecutor's Office?**

The reports on the work of the Prosecutorial Council and the State Prosecutor's Office primarily focus on the work of prosecutorial bodies. However, forensic experts play a key role in many criminal proceedings and their work can have a significant impact on the outcome of cases.

In view of this, consideration should be given to the possibility of presenting

the contribution of court-appointed expert witness in more detail in future reports on the work of the Prosecutorial Council and the State Prosecutor's Office. This could include statistics on the number of cases in which court-appointed expert witness are engaged, as well as an analysis of the impact of their findings on final court decisions.

However, the specific introduction of data on the work of court-appointed expert witness in these reports will depend on further reform and improvement of the judicial system, including digitalization and more efficient monitoring of all participants in proceedings.

### **How can we achieve the greatest possible professionalism and safety in this field?**

Achieving the greatest possible professionalism and safety in the field of court expertise requires coordinated efforts at several levels to ensure high professionalism, impartiality and reliability of the work of court experts.

As I have already said in my answer to the first question, achieving these standards is possible through changes to the legislative framework and through organizational strengthening of responsibilities, selection methods, exclusion from the list and professional checks and competencies of court experts. Only through the revision of the knowledge and quality of experts and the strengthening of their responsibility for (non)work is it possible to improve and strengthen this area.

In order to ensure the safety and confidence of experts, their complete independence from the parties to the proceedings must be ensured. Strict codes of ethics and oversight mechanisms can help prevent conflicts of interest and ensure impartiality in the work of experts.

In addition to all these measures, it is important to continuously work on strengthening public trust in the work of court experts, as their work is crucial for the fair and efficient administration of justice.

### **Do you think that there are privileged individuals in the work of court-appointed expert witness so far, and how is it that we always have the same names in certain areas of expertise, and that they are not the only ones on the list in that field?**

The issue of privileged individuals among court-appointed expert witness is a serious and complex issue that deserves attention. Although we cannot generalize and claim that individual court-appointed expert witness are subject to privileges, there are certain factors that can contribute to certain names being repeated frequently in proceedings.

Namely, some experts have gained a reputation through many years of experience and high quality of their work. This can lead to their frequent involvement in cases because the judicial authorities have confidence in their findings and opinions. Sometimes it's personal recommendations or professional networking, which can influence prosecutors' or judges' decisions when hiring experts. Furthermore, some experts are available 24 hours a day, which is also one of the predominant factors for their engagement by judicial authorities. It should not be overlooked that in certain areas there are very few court-appointed expert witnesses on the list. I believe it is important to work on introducing clear criteria and procedures for the selection of experts to ensure that everyone has an equal chance of being hired. The implementation of a system for monitoring and evaluating the work of court-appointed expert witnesses can help identify potential irregularities and inequalities in their engagement. The quality standard as a basis for the entry of a court expert on the list will also contribute to equal engagement in practice.

**Is the State Prosecutor's Office and to what extent does it have problems with being sued by certain experts, due to exceeding the deadline for payment for the work performed, i.e. Finding and opinion?**

Problems with lawsuits filed by court-appointed expert witnesses regarding delays in the payment of fees for performed work are a serious issue that can affect the cooperation between the State Prosecutor's Office and court experts.

The State Prosecutor's Office recognizes that court-appointed expert witnesses are essential for a fair trial and that their expertise and work must be adequately valued and compensated.

It is indisputable that court-appointed expert witnesses have the right to timely payment for their work, and we are aware that if there is a delay, it may cause dissatisfaction and potential legal consequences. In some cases, the experts decided to sue the State Prosecutor's Office for exceeding the payment deadlines, which further complicates the situation.

Sometimes, administrative processes within the Prosecutor's Office (conditioned by the availability of budget funds in a certain period of the year) can lead to delays in the processing of payments, but the State Prosecutor's Office strives to improve internal procedures and communication with court-appointed expert witness in order to ensure timely payment.

The State Prosecutor's Office is committed to improving relations with court-appointed expert witness and working to reduce the possibility of prosecution. We believe that, through constructive cooperation and improvement of procedures, we will achieve better results and satisfaction of all parties.

**Where do you see that the problem is that prosecutors and judges do not problematize the work of expert witnesses before the Commission for Expert Witnesses, although many studies have shown that a large number of prolonged proceedings create untimely and inadequate findings and opinions of experts?**

The issue of insufficient problematization of the work of court-appointed expert witness by prosecutors and judges before the Commission for Expert Witnesses is an important and complex issue and can be the result of several factors, and I especially emphasize the fact that the lack of standardized procedures and clear criteria for evaluating the work of expert witnesses can make it difficult to identify the problem.

There may also be a need for additional education and raising awareness among prosecutors and judges about the importance of timely and adequate work of expert witnesses. Training and workshops on this topic could help change attitudes and enable more effective problematization of the work of experts.

In order to improve this situation, it is necessary to develop a culture of open communication and cooperation between the prosecutor's office, the courts and the Commission for Experts. In this way, we would work together to improve the quality of expertise and reduce protracted procedures.

In order to improve the state of affairs in this part, the amendments to the Law on the State Prosecutor's Office in June of the current year stipulate as a minor disciplinary offense of the State Prosecutor if he does not submit a

proposal for the dismissal of a court expert in accordance with the law. We believe that by prescribing this provision, state prosecutors will be in a position to more conscientiously approach the evaluation of the work and conduct of court experts.

**How do you see the field of court-appointed expert witness in Montenegro, bearing in mind that out of the total number, about 700 of them, only about 50 court-appointed expert witnesses are members of the Independent Association of Court-appointed expert witnesses of Montenegro, which you chair?**

Court-appointed expert witness in Montenegro, as one of the five subjects of court prosecutorial proceedings, have a very important role and great importance for the quality functioning of the judiciary in every country, including Montenegro. Although two Laws on Court-appointed expert witness and several bylaws have been adopted so far, this area has not been adequately regulated to this day. I dare say that against the background of past reforms and changes in the judiciary, which were adopted on the path of Montenegro's accession to the EU (Chapters 23 and 24 of the EU Accession Package), court-appointed expert witness as a subject of the legal system are lagging behind the most in their normative regulation.

Due to numerous problems in the internal functioning of the once only Association of Court Experts, due to the need to change the unfavorable situation and initiate initiatives before the competent authorities of the State of Montenegro, in order to resolve the obvious inconsistencies and illogicality of the existing legal solution adopted in 2016, a group of court-appointed expert witness withdrew from the former Association in 2020 and formed a separate Independent Association of Court-appointed expert witness of Montenegro. which was formed on 11.01.2021. Recent political changes, which have resulted in frequent personnel changes in the competent Ministry of Justice (5 ministers in four years), have resulted in our initiatives having a slower pace than what we expected when we formally organized. Despite the fact that the members of our Association are proven professionals who are recognized and recognized court experts, our Association unfortunately still does not participate in the bodies and commissions of the Ministry of Justice.

According to the interpretation of the expert service of the Ministry of Justice, at the time of writing the current Law on Court Experts, there was an Association of Court-appointed expert witnesses that was then recognized by the Law of 2016, and this detail, according to their interpretation, is an obstacle for our representatives to be represented in the commissions of the Ministry of Justice on behalf of the profession. On the other hand, based on the invitation of the former Minister of Justice (Marko Kovač), representatives of our Association were members of the Working Team that worked extensively on the development of the Judicial Reform Strategy 2023-2027 and the Action Plan for the Implementation of the Judicial Reform 2024-2027. The period 2024-2025 and this detail, and there are many similar ones, says that the existing Law should be changed in such a way that a completely new law is written and not the Law on Amendments to the Existing Law, which our Work Team is already working on.

### **What are the key problems and what is your status in the Commission for Court Experts?**

There are many key problems. Due to the lack of legal regulation, new trends in this area, the problems are multifaceted, complex and layered. The fact that only about 1/4 (25%) of court-appointed expert witnesses in Montenegro are members of existing associations (according to the Law on Court Experts, membership in professional associations is voluntary), leads to numerous ambivalences in the work of court-appointed expert witnesses and creates an unequal status of court-appointed expert witnesses themselves. The importance of the role of court-appointed expert witnesses and the consequences that their work has on the overall judicial system must not allow for such dualities and legal gaps, because practice has proven that numerous legal provisions have not justified their intention or led to the projected goal. For example: By its definition, the Code of Ethics is a basic list of rules and principles that define moral and professional standards that ensure objectivity, impartiality and unquestionable integrity that, in addition to professional competencies,

every court expert must have. Members of the association are bound by the Code of Ethics, but not court-appointed expert witness who are not members of the association.

Then, professional development as an obligation of every court expert refers to members of the association, but not to court-appointed expert witnesses who are not members of the association, disciplinary responsibility as well, etc. Thus, the existing norm that association is not mandatory implies negative phenomena that are contrary to the law's intention to gradually improve this activity.

As for the second part of your question, our status in the Commission for Experts does not exist because we do not have our representatives in it, which is also an absurd fact. This absurdity led to unbelievable phenomena that the members of the Commission from the ranks of court-appointed expert witness (fellow court-appointed expert witness from another Association) challenged the extension of the decision to the most famous court-appointed expert witness in their fields, who are members of our Association, thus wanting to return them to their Association. There is a lot of evidence of this, which we have attached to the letters to the competent ministry. In this sense, in the existing legal framework, open discrimination is at work against the legal and legitimate Association and all its members.

**How do you comment on the fact that the minutes of the meetings of the Commission for Expert Witnesses for 2023 noted numerous disagreements between representatives of court-appointed expert witness and certain appointments of court experts, due to their non-belonging to the Association of Court Experts?**

I've answered this in part in my previous post. These are indisputably devastating facts. The fact that the representatives of one Association have two of their representatives in the Commission, and the other Association has none, has brought discord to the profession and essentially quarrels with court experts. Their challenges to re-election had no professional, professional or ethical reasons. The reasons why the court-appointed expert witness- members of the Commission, do not support the re-election of their colleagues had only one reason: not belonging to their Association. This is

an incomprehensible phenomenon.

But a phenomenon that was allegedly based on a legal provision with a legally completely unfounded incentive, to reduce and slow down the departure of their members to another (our) Association and to return the departed members to their wing under the threat of such punishment. Due to such phenomena, our members suffered negative consequences, as did those court-appointed expert witnesses who are not members of any association. It was a pity that the deadline for their re-election was extended until our Association informed the Minister of Justice about this phenomenon in writing and verbally. Unfortunately, even today, such abuses are being committed because in anticipation of a new re-election (November 2024), we have proof that three of our members received written warnings (from representatives of another Association) that they will allegedly not meet the legal requirements for re-election due to the fact that they are not members of their Association. In the attachment of the letter, they sent them payment slips for the payment of membership fees and inductive trainings, the payment of which (according to their interpretation of the Law on Court Experts) would meet the conditions for re-election. Although this legal norm was not applied due to previous abuses, they continue with the same practice today. Such actions bring fear and uncertainty to court experts, and some, unfortunately, have even formally joined another Association so as not to fear for their future status. This is evident evidence of examples of inconsistency of the existing Law on Court-appointed expert witnesses with the current situation in this area, which is why it urgently needs to be changed.

### **In what part should the Law on Court-appointed expert witnesses be amended?**

We live in a time of incredibly rapid technological and social change in all spheres of life and work. New achievements are intensively created, which leads to the conclusion that the prescribed professional standards quickly become obsolete and come into conflict with new technological requirements

and life experiences.

In the opinion of the Working Group formed by the Independent Association of Court Experts, it is necessary not to amend the existing one, but to write a completely new Law on Court Experts.

## Why?

Because the new processes and tasks defined by the Judicial Reform Strategy 2024-2027 (adopted by the Government of Montenegro in May 2024), as part of the strategic goal Strengthening the independence, impartiality and accountability of the judiciary, have set operational goals for judicial professions, including court experts, which cannot be realized without a completely new standardization of this activity.

First, it is necessary to follow the example of EU countries, e.g. the Czech Republic, Slovakia, Slovenia, Hungary, etc. To establish a Chamber of Court Experts, in which all court-appointed expert witnesses are obliged to be included. The Chamber, with its delegated powers, must be the umbrella organization of all court experts, following the example of other entities: notaries, bailiffs, lawyers, which takes care of their rights, training, education and legality in work. Court experts, by definition, are the best experts among experts. Therefore, they must have unquestionable professional competencies and unquestionable ethical principles in their work. Today, unfortunately, this is not the case to a significant extent. Many proven experts are not court experts, and on the other hand, many court-appointed expert witnesses do not have the necessary knowledge and practical experience, although they are significantly represented in court and prosecutorial proceedings.

In line with the above, it is necessary to regulate this area in such a way as to promote quality. This work must also be stimulating from the financial point of view, so that proven and quality experts become court-appointed expert witnesses who will know that they will be adequately rewarded for their professional and impartial work. On this day, everything above is not adequately standardized and therefore we as a profession cannot deliver a sufficient level of quality. As a consequence, there is a lot of distrust and criticism of the work of court-appointed expert witnesses on the one hand, but also a lot of dissatisfaction among court-appointed expert witnesses on the other. Because of such illogicalities

and bad legislation, law and justice suffer unjustifiably.

Then, the parties, i.e. the citizens and, of course, the court-appointed expert witness who perform this required job honestly and with high quality, suffer from this.

## What's your relationship with the Ministry of Justice?

Cooperation between the Independent Association of Court-appointed expert witnesses of Montenegro and the Ministry of Justice is weak and insufficient. Over the years, our relationship has had different phases and different approaches. The common denominator of all these stages is contained in the fact that, according to the interpretation of the Ministry's expert service, there are no legal grounds for our closer cooperation. The Independent Association of Court-appointed expert witnesses of Montenegro, according to their interpretation of the Law on Court-appointed expert witness (we did not exist at the time of writing the Law), does not have the right to be represented in the commissions of the Ministry of Justice, although until its formation the members of our Association were prominent members of the commissions who, after the formation of the Independent Association of Court-appointed expert witnesses of Montenegro, were unilaterally and at the request of another Association excluded from them. This does not take into account the factual situation and the guaranteed constitutional freedom of association, so this area is continuously stagnating instead of progressing. I must emphasize that the former Minister of Justice (Mr. M. Kovač), which in my opinion was continued by the current Minister of Justice (Mr. B. Božović), is gradually recognizing in the Independent Association of Court-appointed expert witness a reliable partner and a consistent representative of the profession that inherits quality and professionalism. Therefore, we were invited to participate in the working teams for writing the Judicial Reform Strategy 2023-2027, as well as recently for writing the Draft Law on Court Experts.

It is important not to forget that we are all on the same task. Our mission is to contribute to the promotion of law and justice. The task of the Ministry of Justice is to supervise, assist and direct the work of our associations in order to increase the quality of work and raise standards in this area. These are the principles that we all need to follow. Therefore, in the future, I expect a greater degree of cooperation and mutual understanding at all levels and instances.

## CONCLUSIONS :

"The study has shown that we do not have adequate controls when we talk about the work of court experts, and that the procedure for the dismissal of court-appointed expert witness has been initiated only once in the course of 6 years, it is clear how the supervision is carried out.

The choice of court-appointed expert witness depends on the trust of the judges - court expert, prosecutor

- court expert, and there is no mechanism for equal assignment of work, partly due to low interest in certain areas, partly due to competence and expertise, and partly based on previously built trust.

- The status of the Association of Court-appointed expert witness is also problematic, where there is a very small number of them, only 173, members of this Association, and the Independent Association of Court-appointed expert witness has only 50 members, while the rest remains outside the rules of training, code of ethics and training, which these associations organize.

- From the number of court experts, which, according to the updated list of court experts, is growing from month to month, while only a number of them are actually active in expert examination.

"Thanks to the cooperation with the Association of Court Experts, we have come to the information that this association organized two trainings in 2023, while the Independent Association of Court-appointed expert witness organized 1 training in the same year.

"In Montenegro, there is not a sufficient number of court-appointed expert witness in certain areas, while in certain areas there are too many. There is also the question of the overload of certain court experts, as well as what are the further mechanisms on which the competent ministry and the system as a

## **CONCLUSIONS :**

whole should work in order to solve these problems.

- There are no mechanisms for the protection of state resources, control of working hours within them, when court expertise is performed inside state premises.

## RECOMMENDATIONS :

- Increase control over the work of court experts, their expertise and professionalism, with the participation of the most responsible in this part, i.e. the president of the court, the head of the state prosecutor's office, the elders of the other body conducting the proceedings, the judge and the state prosecutors in whose case the expert witness acted.
  - Develop mechanisms to support the development of the profession in certain areas, as well as empowerment for court expertise.
  - Find a model of equal representation of court experts, where there is a possibility of choice.
  - To change the status of the Association of Court Experts, where it must be considered whether it will go in the direction of the Chamber, or the professional Association, whose membership, training and passage to the Ethics Committee would be mandatory and go through the strengthening of the integrity and professionalism of this profession.
  - In particular, the procedure and methods of expert examination by legal entities should be normatively regulated.
  - Increase training for the work of experts, with an emphasis on controversial areas and professions.
  - Find mechanisms for the protection of state resources when performing expert opinions, as well as a way to control the number of hours of work within them, during the performance of expert opinions.
- "The judiciary should follow the good example that we received with the amendments to the Law on the State Prosecutor's Office in June this year, according to which it is prescribed as a minor disciplinary offense of the state prosecutor if he does not submit a proposal for the dismissal of a court expert in accordance with the law.

