

Selection and Remuneration of Court Appointed Experts

Theory and Practice in International Comparison

Christian Reichert, Dr. Anja Schoeller-Schletter¹

In reaching a verdict, it is the judge's very own task to assess diverse evidence and thus to make a final decision according to his free conviction, in accordance to the law. In practice, however, numerous problems arise. Even if a right theoretically exists by its own virtue, the assertion of this right is often restricted or impossible as long as the person claiming the right cannot provide sufficient evidence.² Thus, in practice, the lack of evidence is sometimes tantamount to the non-existence of the right itself.

The need for expert opinions and corresponding regulation

Against the background of the significance of the evidence for the judgement, numerous procedural rules contain regulations with regard to the collection and handling of evidence. In order to be able to decide on the legal questions raised in the specific individual case, the judge has at his disposal the evidence listed in the respective rules of procedure, such as testimony, appearance, party hearings and expert opinions. The latter in particular is becoming increasingly important, especially against the background of scientific and technical developments, which judges often fail to understand. Mainly in medical malpractice cases or in cases relating to technical questions in patent infringement disputes, it is usually impossible for the court, without specific expertise, to fully grasp these specific facts and make a decision.³

¹ This study was prepared in 2018/2019 within the Rule of Law Programme Middle East North Africa of the Konrad-Adenauer-Stiftung.

² Ghestin, *Traité de droit civil, introduction générale*, 4th edition 2009, L.G.D.J., Paris, n° 628.

³ Roelants du Vivier, *L'expertise obligatoire: domaines et caractère*, *Colloques Cour de Cassation*, available at: http://www.courdecassation.fr/colloques_activites_formation_4/2007_2254/expertise_obligatoire_domaines_caractere_10914.html.

The expert's report is intended to counteract this lack of specialized knowledge; as the court's "*assistant*", it is the task of the expert to convey to the judge the required knowledge, so that he/she can decide on the matter.⁴ As such, the expert has an essential, if not decisive role in the process of reaching a verdict. In most cases, judicial decisions are significantly influenced or determined by the contents and recommendations laid down in expert opinions.

In this context, the importance of the selection of the expert becomes evident. The selection and appointment of a qualified expert in the matter can be decisive in a case. In order to ensure a certain standard of objectivity in relation to judicial decisions - especially against the background of the sometimes far-reaching influence of expert opinions on the judicial decision - it is essential to establish a set of criteria both with regard to the selection and the activity of experts. The compensation of experts also plays a significant role. Uniform rules on determining the remuneration of experts help ensure an independent and objective analysis of the individual case.

Reform initiatives and comparative perspective

In several countries the need to revise and up-date legislation on selection and remuneration of experts has been identified as a major concern of the justice sector, especially among the judges themselves. Large discrepancies between remuneration amounts, a lack of up-dated lists of experts and their specific qualifications, and the impossibility for the parties before court to foresee the costs of the proceeding due to a lack of tables and scales for expert opinions, have incited discussions for reforms. The High Judicial Council of Lebanon has taken initiative in 2018 to reform and up-date the regulatory framework for the selection and remuneration of court appointed experts and expenses for law clerks. This study has been prepared in response to the demand of integrating a comparative perspective. In view of these discussions, in particular the MENA region, the authors have designed this study as an input. The study aims to analyze established rules in theory and practice in countries of Europe, that look back on a long tradition in this field and that themselves have undergone considerable reform over the years:

The French model (II), which was and still is considered the source of inspiration for numerous countries in northern Africa, and the British system (III) as a representative of common law are compared to the German legal system. The aim is to provide access to comparative material that may serve countries seeking to reform their own rules of procedure to develop their own set of rules, fitting to the individual country-specific situation and legal system.

⁴ Leclerc, *Le juge et l'expert - Contribution à l'étude des rapports entre le droit et la science*, 1st edition 2005, L.G.D.J., Paris, p. 5; BT-Drucks. 15/1971 of 11 November 2003, p. 142.

I. Germany

The selection and remuneration of court appointed experts in civil and administrative proceedings is based on the provisions of the Code of Civil Procedure. Regulations on evidence by way of expert opinions can be found in all German procedural regulations. With regard to criminal proceedings, sections 72 to 93 of the Code of Criminal Procedure (Strafprozessordnung, StPO) apply.

With regard to civil proceedings, regulations are found in sections 402 to 414 of the Code of Civil Procedure (Zivilprozessordnung, ZPO). With regard to evidence in administrative proceedings, section 84 of the Code of Administrative Courts (*Verwaltungsgerichtsordnung, VwGO*) declares sections 358 to 444 and sections 450 to 494 of the Code of Civil Procedure applicable accordingly. The exclusive provision of section 84 of the Code of Administrative Courts explicitly includes the provisions of sections 402 to 414 of the Code of Civil Procedure, thus making on the provisions of the Code of Civil Procedure applicable for the selection and remuneration of the experts also in administrative proceedings.

1. Theory

Regulations on the law of evidence, including the selection and remuneration of experts, have undergone numerous changes in the past. In 2004, for example, the German legislature decided to introduce a comprehensive reform of cost law⁵ with the introduction of the Justice Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz, JVEG*)⁶. The reform focused in particular on ensuring a reliable predictability of costs associated with legal proceedings, since for many litigants, the amount of the legal expenses related to the proceedings is a decisive factor when considering whether it is economically justifiable to claim legal protection at all.⁷ Against this background, the outdated remuneration principle⁸ was successively replaced by a modern remuneration model that ensures that the activities of experts, interpreters and translators are remunerated in line with performance.⁹ At the same time, a relatively easy-to-use remuneration system was being created which is perceived as transparent, predictable and fair by those seeking legal assistance. By creating greater transparency legal certainty and - as an overall result - the rule of law should be strengthened.

a) Selection

In civil proceedings, the selection of the experts to be called upon and the number of experts to be appointed, is based on section 404 of the Code of Civil Procedure. It is to be carried out, in accordance with paragraph 1, at the dutiful discretion of the trial court.¹⁰ The law does not provide for any specific selection criteria, so that the court is basically free in its choice. However, section 404 para. 3 of the Code of Civil Procedure gives less room in those cases in which experts are publicly appointed for certain types

⁵ Cost Law Modernisation Act (Kostenrechtsmodernisierungsgesetz, KostRMoG) of 5 May 2004, BGBl. I p. 718.

⁶ Act on the Remuneration of Experts, Interpreters, Translators and Remuneration of Honorary Judges, Witnesses and Third Parties (Justizvergütungs- und -entschädigungsgesetz, JVEG) of 5 May 2004, BGBl. I p. 718, 776, most recently amended by article 5 para. 2 of the Act Amending the Law on Experts and the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG) and amending the Social Courts Act (Sozialgerichtsgesetz, SGG), the Rules of the Administrative Courts (Verwaltungsgerichtsordnung, VwGO), the Code of Procedure for Fiscal Courts (Finanzgerichtsordnung, FGO) and the Court Fees Act (Gerichtskostengesetz, GKG) of 11 October 2016, BGBl. I p. 2222.

⁷ BT-Drucks. 15/1971 of 11 November 2003, p. 140 et seq.

⁸ Section 3 of the Law on the Compensation of Witnesses and Experts (Gesetz über die Entschädigung von Zeugen und Sachverständigen, ZuSEG) established a fixed system of framework compensation with surcharge options. This gave rise to legal action with regard to uncertainties and disputes in the area of compensation for experts and interpreters, in particular due to the fuzzy conditions concerning the surcharge options. The different fixing practices of the courts resulting from the lack of clarity led to legal fragmentation, legal uncertainty and individual injustices (cf. BT-Drucks. 15/1971 of 11 November 2003, p. 142).

⁹ BT-Drucks. 15/1971 of 11 November 2003, p. 142.

¹⁰ Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 404, recital 3; Oehler, Zur Problematik der Sachverständigenauswahl, in: ZRP 1999, 285.

of expert opinions, where other experts may only to be selected if special circumstances so require.¹¹ This is justified by the fact that publicly appointed experts are sworn in to certify special expertise, objectivity, impartiality and freedom from instructions.¹²

In addition, the law allows for early and comprehensive involvement of the parties to the proceedings. It is possible for the parties to be heard by the court before the expert is appointed, according to section 404 para. 2 of the Code of Civil Procedure. The court may also request the parties to propose suitable experts in accordance with section 404 para. 4 of the Code of Civil Procedure. In particular, this is to prevent any applications for refusal of experts (cf. section 406 of the Code of Civil Procedure).¹³ In addition, the provision in paragraph 5, stating that court is bound by the designation of a certain person as an expert by mutual agreement, is a result of the principle that the parties delimit the subject-matter of the proceedings.

In criminal proceedings, the selection of the expert is based on section 73 of the Code of Criminal Procedure.¹⁴ The selection of the experts to be called upon and the number of experts to be appointed is made by the judge (cf. section 73 para. 1 sentence 1 of the Code of Criminal Procedure) or by the public prosecutor's office (section 161a para. 1 sentence 2 of the Code of Criminal Procedure). Furthermore, section 73 para. 2a of the Code of Criminal Procedure uses the same wording of section 404 para. 3 of the Code of Civil Procedure, limiting the judge's discretion in all cases in which experts are publicly appointed for certain types of expert opinions. This serves as "*quality assurance*".¹⁵ However, on the basis of the rule of law, the court must base its selection of the expert(s) on the inquisitorial principle and the duty to establish the truth.¹⁶

b) Remuneration

The remuneration of court-appointed experts is regulated in section 413 of the Code of Civil Procedure, and in section 84 of the Code of Criminal Procedure. In administrative procedure section 413 of the Code of Civil Procedure apply accordingly by explicit reference in section 84 of the Rules of Administrative Courts. According to these regulations, which are identical in wording, the expert receives remuneration in accordance with the Justice Remuneration and Compensation Act.

(1) Determination of the remuneration according to the Justice Remuneration and Compensation Act

The Justice Remuneration and Compensation Act provides the basis for the remuneration of experts, interpreters and translators. Remuneration or compensation is granted exclusively in accordance with the Justice Remuneration and Compensation Act (section 1 para. 1 sentence 2), and the provisions laid down in this Act with regard to determining the amount of remuneration are *leges speciales* (section 1 para. 5) and therefore take precedence over provisions of other procedural provisions.

¹¹ Although the prevailing opinion is that this rule only contains a regulatory provision (cf. Zimmermann, in: Münchener Kommentar zur ZPO - Band 2, 5th edition 2016, C.H. Beck, Munich, section 404, recital 7; Greger, in: Zöller, ZPO, 32nd edition 2018, Dr. Otto Schmidt, Cologne, section 404, recital 2), disregarding it in individual cases may constitute an error of judgement (cf. Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 404, recital 7).

¹² Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 404, recital 7; Zimmermann, in: Münchener Kommentar zur ZPO - Band 2, 5th edition 2016, C.H. Beck, Munich, section 404, recital 8. Concerning the conditions for the appointment, cf. Federal Constitutional Court, decision of 25 March 1992 - 1 BvR 298/86, in: NJW 1992, 2621.

¹³ Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 404, recital 1.

¹⁴ In detail Trück, in: Münchener Kommentar zur StPO, 1st edition 2014, C.H. Beck, Munich, section 73, recital 1 et seq.

¹⁵ Trück, in: Münchener Kommentar zur StPO, 1st edition 2014, C.H. Beck, Munich, section 73, recital 3.

¹⁶ Trück, in: Münchener Kommentar zur StPO, 1st edition 2014, C.H. Beck, Munich, section 73, recitals 14, 21; Rogall, in: Systematischer Kommentar zur Strafprozessordnung - Band 1, 4th edition 2013, Carl Heymanns, Cologne, section 73, recital 44.

The Act regulates "the remuneration of experts, interpreters and translators who are called upon by the court, the public prosecutor's office, the tax authority in cases in which the latter carries out the investigation procedure independently, the administrative authority in proceedings under the Act on Regulatory Offences or the bailiff" (section 1 para. 1 sentence 1 no. 1, Justice Remuneration and Compensation Act). This regulation includes those experts, interpreters and translators who are commissioned by the police or another law enforcement authority on behalf of or with prior approval of the public prosecutor's office or the tax authority (section 1 para. 3 sentence 1, Justice Remuneration and Compensation Act). It also applies for authorities or other public bodies that are consulted for expert services (section 1 para. 2 sentence 1, Justice Remuneration and Compensation Act), except if the service is provided as part of their official function or duties. The regulation does not apply to private experts, though. They are to be compensated by the respective client.¹⁷ Pursuant to section 1 para. 1 sentence 3 of the Justice Remuneration and Compensation Act, whoever is requested for bringing the service - be it individual or entity - is entitled to the remuneration, irrespective of who specifically has carried out the activity.

The remuneration is generally determined by the cost officer,¹⁸ upon explicit request of the entitled party or the state treasury by court order (cf. section 4 para. 1 sentence 1 of the Justice Remuneration and Compensation Act). The entitled party must assert the claim to payment of the remuneration within a preclusive period of three months (section 2 para. 1 and para. 2 of the Justice Remuneration and Compensation Act). The claim expires after three years following the end of the calendar year in which it arose (cf. section 2 para. 3 of the Justice Remuneration and Compensation Act), in reference to the provisions of sections 194 et seq. of the Civil Code (*Bürgerliches Gesetzbuch, BGB*). It is possible to make an advance payment (cf. section 3 of the Justice Remuneration and Compensation Act) if this is explicitly requested. The competent court must grant such a motion if the entitled expert has incurred or is expected to incur substantial travel costs or other expenses or if the expected amount of remuneration for partial services already rendered exceeds EUR 2,000.00.

(2) Calculation of the remuneration

The scope of the remuneration is generally regulated in section 8 of the Justice Remuneration and Compensation Act. In addition to a fee for their services (cf. sections 9 to 11 of the Justice Remuneration and Compensation Act), experts, interpreters and translators receive compensation for travel costs (cf. section 5 JVEG), compensation for expenses (cf. section 6 of the Justice Remuneration and Compensation Act). Compensation may also be granted for other and special expenses that fall under sections 7 and 12 of the Justice Remuneration and Compensation Act. In general, costs incurred by the person entitled to claim under section 1 para. 1 of the Justice Remuneration and Compensation Act within the framework of preliminary audits (cf. section 407a para. 1 of the Code of Civil Procedure) or statements on applications for refusal are not being remunerated under the Justice Remuneration and Compensation Act.¹⁹ This might be different in individual cases,²⁰ e.g. when a considerable amount of work was required during the preliminary examination.²¹ However, time for literature research may only to be recognized in exceptional cases.²² If the expert is asked to draw up an expert opinion but this is not commissioned following the de-termination of the probable costs required for the preparation of the expert opinion, the expert may be compensated for the time spent.²³

¹⁷ Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 413, recital 1.

¹⁸ Scheuch, in: Beck'scher Online-Kommentar zur ZPO, 27th edition (as of 1 December 2017), section 413, recital 11a; Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 413, recital 1.

¹⁹ BGH (Federal Court of Justice), ruling of 8 May 1979 - VI ZR 58/78, in: VersR 1979, 718; BGH (Federal Court of Justice), decision of 23 April 2002 - X ZR 83/01, in: GRUR 2002, 732 - Massedurchfluss; Scheuch, in: Beck'scher Online-Kommentar zur ZPO, 27th edition (as of 1 December 2017), section 413, recitals 5, 11.

²⁰ Concerning the comment on the motion for refusal OLG (Higher Regional Court) Frankfurt/Main, decision of 24 February 1993 - 4 WF 13/93, in: MDR 1993, 484.

²¹ Ahrens, in: Wiczorek/Schütze, ZPO - Band 6, 4th edition 2014, De Gruyter, Berlin, section 413, recital 6.

²² OLG (Higher Regional Court) Zweibrücken, decision of 10 July 2015 - 6 W 11/15, in: IBR 2015, 694.

²³ Scheuch, in: Beck'scher Online-Kommentar zur ZPO, 27th edition (as of 1 December 2017), section 413, recital 6; Greger, in: Zöller, ZPO, 32th edition 2018, Verlag Dr. Otto Schmidt, Cologne, section 413, recital 1.

Notwithstanding to the above said, the legislator permits the granting of remuneration that deviates from the statutory provisions, provided that the parties or participants have given their consent to the court (section 13 para. 1 of the Justice Remuneration and Compensation Act). However, payment of such "*special remuneration*" is conditional upon the parties having initially made a sufficient down-payment to the state treasury for the total remuneration of the expert, interpreter or translator.²⁴

Furthermore, it is possible that the highest state authority, or the supreme Federal authority in relation to courts and authorities of the Federation, make a fee agreement with individual experts, interpreters or translators, who are frequently commissioned, that is deviating downwards from the statutory regulations (section 14 of the Justice Remuneration and Compensation Act). However, the payment of a higher remuneration than that provided for by law cannot not be the subject of such an agreement.

(aa) Honorarium

The expert's or interpreter's honorarium is calculated according to the amount of time required (section 9 para. 1 of the Justice Remuneration and Compensation Act). The law divides different services into a total of 16 fee groups and assigns each group an hourly rate between EUR 65.00 and EUR 125.00 (cf. Appendix 1).²⁵ The time required for rendering the service serves as the basis for the assessment of the time required, pursuant to section 8 para. 2 sentence 1 of the Justice Remuneration and Compensation Act and the case-law of the Federal Supreme Court. In this sense, only "*the time required for an expert with average skills and knowledge to form an impression of the questions to be answered after careful study of the files and to make his expert opinion in writing after careful consideration*" is required.²⁶ Necessary travel and waiting times are also covered as required time (section 8 para. 2 sentence 1 of the Justice Remuneration and Compensation Act). One working hour is considered in full when more than 30 minutes were required for the performance of the service (section 8 para. 2 sentence 2 half sentence 1 of the Justice Remuneration and Compensation Act). Otherwise the fee for this period will be divided by 2 (section 8 para. 2 sentence 2 half sentence 2 of the Justice Remuneration and Compensation Act).

The court shall allocate the services rendered by the expert to a fee group on the basis of the subject areas listed in Annex 1 to section 9 para. 1 of the Justice Remuneration and Compensation Act (see below, Appendix 1). A distinction is made between the 40 most frequently requested subject areas²⁷, such as acoustics and noise protection, construction, professional studies and activity analysis, business management, property valuation, determination of fire causes, vehicle construction, horticulture and landscaping including sports facility construction, fees charged by architects and engineers, art and antiques, food chemistry and technology, rents and leases, ships and water sports vehicles, animals or determination of causes and reconstruction in the event of vehicle accidents. Subjects of medical and psychological reports are listed separately (cf. fee groups M 1 to M 3).

A distinction is made here according to the degree of difficulty of the assessment. In addition, "*special services*" are remunerated in accordance with section 10 of the Justice Remuneration and Compensation

²⁴ In more detail BGH (Federal Court of Justice), decision of 28.May 2013 - X ZR 137/09, in: NJW-RR 2013, 1403, recital 9; BGH (Federal Court of Justice), decision of 7 November 2006 - X ZR 138/04, in: GRUR 2007, 175 - Sachverständigenentschädigung IV; BGH (Federal Court of Justice), decision of 28 July 2009 - X ZR 139/07, recital 5, available at: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=49021&pos=0&anz=1>.

²⁵ The amount of the legally stipulated hourly rates is based on the results of extensive data collection from courts, public prosecutor's offices and out of court regarding the amount of compensation and remunerations granted in each case, whereby current overhead costs, in particular for old-age provision and disease prevention, are recorded (cf. BT-Drucks 15/1971 of 11 November 2003, p.182).

²⁶ Cf. concerning sections 3 para. 2, 7 para. 2 Law on the Compensation of Witnesses and Experts (Gesetz über die Entschädigung von Zeugen und Sachverständigen, ZuSEG) BGH (Federal Court of Justice), decision of 7 November 2006 - X ZR 65/03, in: GRUR 2007, 264; cf. also Scheuch, in: Beck'scher Online-Kommentar zur ZPO, 27th edition (as of 1 December 2017), section 413, recital 2.

²⁷ The assignment of the experts to the individual fee groups is based on an expert survey conducted by the Association of German Chambers of Industry and Commerce, the Federal Chamber of Architects, the Federal Chamber of Engineers and the Central Association of German Crafts, cf. BT-Drucks. 15/1971 of 11 November 2003, p. 142.

Act. This standard covers the medical services listed in Annex 2 to section 10 para. 1 of the Justice Remuneration and Compensation Act (e.g. postmortem and autopsy, findings, examinations and blood sampling or descent reports).

If the service to be provided by the expert cannot be assigned to a certain fee group, it is to be assigned to a fee group at reasonable discretion, taking into account the hourly rates generally agreed for services of this type (section 9 para. 1 sentence 3 of the Justice Remuneration and Compensation Act). In case the service concerns different subject areas at the same time, which, in turn, are assigned to different fee groups, the highest of these fee groups is to be used uniformly as basis for assessment for the entire time required (section 9 para. 1 sentence 4 of the Justice Remuneration and Compensation Act). However, should this lead to an unfair result with regard to the focus of the service to be provided, the fee group shall be determined at reasonable discretion taking into account the hourly rates for comparable services (cf. section 9 para. 1 sentence 3 of the Justice Remuneration and Compensation Act).

However, in order to avoid unfair or arbitrary determination of remuneration, the legislator has provided for the possibility of a complaint on the part of the expert and the state treasury (section 4 para. 3 to para. 9 of the Justice Remuneration and Compensation Act.) This ensures that the amount of the fee is not at the sole discretion of the judge, but that certain standards are set.²⁸

The law regulates the amount of remuneration for translations in a separate provision (section 11 of the Justice Remuneration and Compensation Act). The honorarium depends on the number of characters translated. A distinction is made between texts that can be edited electronically (basic fee) and texts that cannot be edited electronically (increased fee). In the case of complex texts or texts difficult to read, both the basic fee and the increased fee are incremented.

(bb) Reimbursement of travel costs

Section 5 of the Justice Remuneration and Compensation Act regulates the reimbursement of travel costs incurred. When public transport is being used, reimbursement amounts up to the actual expenses incurred, up to a maximum of the "costs for the use of the first class of the railway including the expenses for seat reservation and transport of the necessary luggage" (section 5 para. 1 of the Justice Remuneration and Compensation Act). If the entitled party uses a motor vehicle, he/she may receive EUR 0.30 for each kilometer driven (section 5 para. 2 sentence 1 no. 2 of the Justice Remuneration and Compensation Act) thus also compensating for acquisition, maintenance and operating costs as well as the wear and tear of the vehicle. In specific cases, higher travel costs can be reimbursed under the conditions laid down in section 5 para. 3 to para. 5 of the Justice Remuneration and Compensation Act.

(cc) Compensation for expenses

A daily allowance as well as the costs incurred for a necessary external overnight stay may also be reimbursed to entitled persons (section 6 of the Justice Remuneration and Compensation Act in combination with section 1 para. 1 of the Justice Remuneration and Compensation Act). The *per diem* allowance, which is paid due to the absence of the entitled person from his home and his place of activity, is based on the food allowance in accordance with the Income Tax Act, in order to compensate for additional expenses actually incurred due to the professional activity (section 6 para. 1 of the Justice Remuneration and Compensation Act). The amount of the accommodation allowance is calculated according to the rules and regulations of the Federal Travel Expenses Act (section 6 para. 2 of the Justice Remuneration and Compensation Act).

²⁸ Cf. in addition the relevant case-law concerning complaints, e.g. BGH (Federal Court of Justice), decision of 7 November 2006 - X ZR 65/03, in: GRUR 2007, 264.

(dd) Compensation for other and special expenses

Special expenses may be reimbursed in accordance with section 12 para. 1 of the Justice Remuneration and Compensation Act. This includes in particular extraordinary costs incurred for the preparation and reimbursement of the expert opinion or the translation, including the costs for assistants, or for objects which were needed or consumed for an investigation to be carried out (section 12 para. 1 sentence 2 no. 1, para. 2 of the Justice Remuneration and Compensation Act). Costs for photographs will be reimbursed at a fixed rate of EUR 2.00 per photo (section 12 para. 1 sentence 2 no. 2 of the Justice Remuneration and Compensation Act).

The preparation of a written expert opinion shall be remunerated at EUR 0.90 per 1,000 characters, or part thereof (section 12 para. 1 sentence 2 no. 3 of the Justice Remuneration and Compensation Act). Finally, the value added tax attributable to the remuneration is also compensated, provided that no exemption from value added tax applies due to turnover below the tax bracket pursuant to section 19 para. 1 of the Value Added Tax Act (section 12 para. 1 sentence 2 no. 4 of the Justice Remuneration and Compensation Act).

Furthermore, other necessary expenses which are not mentioned in sections 5, 6 and 12 of the Justice Remuneration and Compensation Act may be reimbursed in accordance with section 7 para. 1 sentence 1 of the Justice Remuneration and Compensation Act. According to the non-exhaustive, but exemplary list (cf. wording "*in particular*") laid down in section 7 para. 1 sentence 2 of the Justice Remuneration and Compensation Act, this includes the costs incurred for representatives and accompanying persons, if these were necessary. Expenses for making copies and printouts may also be reimbursed. In case electronically stored files are provided instead of copies or printouts, an amount of EUR 1.50 per file shall be paid (section 7 para. 2 and 3).

(3) Lapse or limitation of the right to remuneration

The law makes provisions for several cases in which the claim to remuneration either ceases or is limited (section 8a of the Justice Remuneration and Compensation Act). The claim for remuneration may be void, if the person entitled to claim compensation according to section 1 para. 1 of the Justice Remuneration and Compensation Act refrains from immediately notifying the body appointing him/her of possible reasons for refusal, and also is responsible for this failure.²⁹ Paragraph 2 of section 8a of the Justice Remuneration and Compensation Act contains an exhaustive list of those cases in which the remuneration is to be reduced, whereby the amount of the reduction is measured by the intended usability of the expert's performance:

- A restriction must be made in the case in which the expert has violated the obligation under section 407a para. 1 to 4 sentence 1 of the Code of Civil Procedure (section 8a para. 2 sentence 1 no. 1 of the Justice Remuneration and Compensation Act), which is the case, for example, if the expert has accepted an order which does not fall within his or her area of expertise or which he/she cannot complete without the involvement of further experts and within the period stipulated by the court.³⁰ A violation of this obligation also exists if the expert does not inform the court that he/she has doubts about the content and scope of the order. With regard to the standard of fault, simple negligence is sufficient.³¹
- The claim must also be reduced if the person entitled under section 1 para. 1 of the Justice Remuneration and Compensation Act has provided a defective service (section 8a para. 2

²⁹ OLG (Higher Regional Court) Celle, decision of 25 October 1995 - 2 W 61/95, in: NJW-RR 1996, 1086; OLG (Higher Regional Court) Coblenz, decision of 24 June 2002 - 14 W 363/02, in: NJOZ 2002, 2031; Zimmermann, in: Münchener Kommentar zur ZPO - Band 2, 5th edition 2016, C.H. Beck, Munich, section 413, recital 7.

³⁰ OLG (Higher Regional Court) Nuremberg, decision of 12 June 2006 - 5 W 980/06, in: BauR 2006, 1361.

³¹ OLG (Higher Regional Court) Coblenz, decision of 24 June 2002 - 14 W 363/02, in: NJOZ 2002, 2031; Zimmermann, in: Münchener Kommentar zur ZPO - Band 2, 5th edition 2016, C.H. Beck, Munich, section 413, recital 7; Berger, in: Stein/Jonas, Kommentar zur ZPO - Band 5, 23th edition 2015, Mohr Siebeck, Tübingen, section 413, recital 16.

sentence 1 no. 2 of the Justice Remuneration and Compensation Act). Any fault, including slight negligence, shall suffice.³²

- If the claimant, within the scope of the assigned service provision, has created reasons through gross negligence or intentionally (here slight negligence is not sufficient) which justify a motion for refusal because of concerns of bias, the claim to remuneration is also to be reduced (cf. section 8a para. 2 sentence 1 no. 3 of the Justice Remuneration and Compensation Act).
- Finally, the claim to remuneration must be limited in amount if the expert has not fully rendered his or her service despite the fixing of a fine (section 8a para. 2 sentence 1 no. 4 of the Justice Remuneration and Compensation Act).

If the expert's performance is unusable as a whole, a complete loss of the entitlement to remuneration generally occurs.³³

2. Practice

a) Selection

The involvement of an expert is required in an average of approximately 10 to 15% of legal disputes. The higher the amount in dispute, the greater the probability that an expert opinion will be obtained. The selection of the experts takes place in particular via the homepage of the Chamber of Industry and Commerce (*Industrie- und Handelskammer, IHK*), whereby judges are granted access to a nationwide directory.³⁴ With the search function provided, experts from specific fields can be identified and displayed. If a suitable expert cannot be found, it is still possible to submit a prior inquiry to a relevant body, such as the Chamber of Industry and Commerce. It is not uncommon for experts to get into contact with the courts on their own initiative offering services. These e-mails are forwarded by the court administration to all concerned judges. In addition, judges also refer to experts they already know from previous proceedings, based on their own positive experience. Recommendations from colleagues also play a significant role. However, there are no internal court directories listing experts by subject area.

In principle, the parties to the proceedings have no say in the selection of the experts. An expert may be rejected (after appointment) for factual reasons, with the consequence that he/she may be replaced. However, if a party submits a proposal to the court in advance regarding the selection of the expert to be appointed, it is often examined in consultation with the other party. However, such cases are extremely rare in practice, as the proposed expert by one party is usually not accepted by the other party to the proceedings. A reasoning by the judge is only required in case a motion for discharge is rejected. However, the appointment of the expert himself/herself does not require any justification.

b) Remuneration

It is to be noted that in practice the amount of the expert's remuneration is determined by the judge himself/herself, but rather by the responsible cost officer, with very few exceptions. The provision of section 4 para. 1 of the Justice Remuneration and Compensation Act thus has little practical significance. In practice, the granting of an advance in accordance with section 3 of the Justice Remuneration and Compensation Act is the rule.

There are usually no difficulties in assigning the services to be provided by the authorized expert to the subject areas listed in Appendix 1 to section 9 para. 1 of the Justice Remuneration and Compensation

³² Berger, in: Stein/Jonas, Kommentar zur ZPO - Band 5, 23th edition 2015, Mohr Siebeck, Tübingen, section 413, recital 16; Zimmermann, in: Münchener Kommentar zur ZPO - Band 2, 5th edition 2016, C.H. Beck, Munich, section 413, recital 4; Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 413, recital 2.

³³ Huber, in: Musielak/Voit, ZPO, 14th edition 2017, Vahlen, Munich, section 413, recital 3.

³⁴ Available at: <https://svv.ihk.de/content/home/home.ihk>.

Act. In cases in which this problem actually exists, it will be directly addressed by the expert and clarified with the parties before the assignment. Cases in which the service to be provided by the expert cannot be allocated to a fee group and therefore has to be allocated at equitable discretion (cf. section 9 para. 1 sentence 3 of the Justice Remuneration and Compensation Act) are virtually non-existent in practice.

The remuneration as it is determined does not need a justification. The time spent by the expert can only be checked for plausibility; only if extreme rogue results stand out they can be reprimanded by the judge. In practice, what meant as an exception by the law - a remuneration deviating from the legal regulation being granted, provided that the parties or participants have declared their consent to the court (section 13 of the Justice Remuneration and Compensation Act) - is very often applied. This is due to the fact that a large number of experts, especially in the medical, traffic engineering or construction engineering sectors, are of the opinion that a significant increase in the hourly rate is necessary. Experts who work at the regular statutory fee level can hardly be found. The request of the expert (cf. section 13 of the Justice Remuneration and Compensation Act) together with the expert's reasoning will be forwarded to the parties for their comments. If they (as a rule) agree, a decision is taken by the competent judge regarding the higher remuneration. In many cases the request for higher remuneration is also justified by the necessary use of special technical devices.

Cases where the highest state authority or a body determined by this authority may agree on a fee deviating from the statutory regulations with individual experts who are commissioned more frequently (section 14 of the Justice Remuneration and Compensation Act) are practically unknown. Cases in which the remuneration claim of the expert either ceases or is limited in amount according to section 8a of the Justice Remuneration and Compensation Act are quite common in practice. In particular, the provision of section 8a para. 2 no. 4 of the Justice Remuneration and Compensation Act is of practical importance. Complaints pursuant to section 4 para. 3 to para. 9 of the Justice Remuneration and Compensation Act against the determination of remuneration are raised only in exceptional cases.

3. Résumé

The German legislator has made quite detailed regulations both with regard to the selection and the remuneration of the expert. Practical implementation seems to be possible without any significant difficulties. In the opinion of practitioners, however, there is room for improvement with regard to the verifiability of the services provided by the expert, especially with regard to the amount of working hours performed.

In general and overall, the regulations of the Justice Remuneration and Compensation Act are rated positively by judges. In particular, the amount of procedural costs is regarded as having become considerably more transparent and calculable as a result of the new regulation of the remuneration law in the Justice Remuneration and Compensation Act. However, a certain risk always remains with regard to the amount of costs associated with legal proceedings, which may hinder the assertion of rights of persons seeking justice.

II. France

The expert report in French procedural law is a measure for taking evidence. It may be ordered if the evidence available is not sufficient to enable the judge to objectively substantiate the judgment.

1. Theory

The expert is usually appointed by the court on the basis of his particular expertise; however, this is not a necessary condition in French civil procedure law.³⁵ The question of whether it is necessary to appoint an expert in a legal dispute is at the sole discretion of the court.³⁶ According to Art. 144 of the Code of Civil Procedure (*Code de procédure civile*), the judge may order the report either *ex officio* without requesting an opinion from the parties or at their request. The judge is also free to refuse a motion asking for an expert opinion.³⁷

Similarly, under criminal procedure law, any investigative or criminal court may, if necessary, at the request of the public prosecutor or on its own initiative or at the request of the parties, request an expert opinion, Art. 156 para. 1 of the Code of Criminal Procedure (*Code de procédure pénale*). However, if the competent judge does not consider it necessary to obtain an expert opinion, he/she must issue an order to this effect at the latest one month after receipt of the request and justify the negative decision, Art. 156 para. 2 of the Code of Criminal Procedure.

a) Selection

With regard to the selection of the expert, Art. 157 of the Code of Criminal Procedure and Art. 265 of the Code of Civil Procedure contain detailed provisions. The judge can designate a natural or legal person as an expert listed either on the national directory of the *Cour de cassation* (Court of Cassation) or the respective *Cour d'appel* (Court of Appeal)^{38, 39} However, and as an exception, the judge may appoint an expert who is not on one of these lists; this requires a detailed justification (Art. 157 para. 2 of the Code of Criminal Procedure).⁴⁰ One reason for the choice of an unregistered expert may lie in his or her particular professional competence in carrying out the tasks assigned to him/her.⁴¹ For example, in the event that other experts are not available or in urgent cases, the investigating judge may call in an expert who is not inscribed on one of the aforementioned lists.⁴² In addition, those experts who are not registered must take an oath within the meaning of Loi (Law) n° 71-498 of 29 June 1971 before carrying out their duties (Art. 160 para. 1 of the Code of Criminal Procedure). Key selection criteria, however, is that the expert has above-average qualifications.⁴³

However, the parties to the civil proceedings are free to contact an expert of their choice themselves. They do not have to limit themselves to the lists mentioned above. This form of obtaining expert opinions is the so-called "*expertise amiable*" and "*expertise officieuse*". In contrast to the expert opinion, which is carried out by order of the judge and under the conditions of Art. 232 et seq. of the Code of Civil

³⁵ Adloff, Vorlagepflichten und Beweisvereitelung im deutschen und französischen Zivilprozess, p. 158.

³⁶ Cour de cassation (Court of Cassation), Cass. crim., ruling of 11 July 1972, in: Bull. crim., n° 234.

³⁷ Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 16 December 2004, in: Bull., II, n° 529, p. 452.

³⁸ Cf. Loi (Law) n° 71-498 of 29 June 1971.

³⁹ The respective lists are available online at:

https://www.courdecassation.fr/informations_services_6/experts_judiciaires_8700.html.

⁴⁰ Cour de cassation (Court of Cassation), Cass. crim., ruling of 25 October 1983, in: Bull. crim., n° 267; Cour de cassation (Court of Cassation), Cass. crim., ruling of 3 September 1985, in: Bull. crim., n° 283; Cour de cassation (Court of Cassation), Cass. crim., ruling of 15 May 1990, in: Bull. crim., n° 193; Cour de cassation (Court of Cassation), Cass. crim., ruling of 8 July 2004, in: Bull. crim., n° 180.

⁴¹ Cour de cassation (Court of Cassation), Cass. crim., ruling of 27 October 2004, in: Bull. crim., n° 260.

⁴² Cour de cassation (Court of Cassation), Cass. crim., ruling of 26 November 2002, file n° 01-85.138, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007604363>.

⁴³ Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs / Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V. / Institut für Sachverständigenwesen e.V., Das Sachverständigenwesen in Europa - Aktuelle Fragen und Antworten, 1st edition 2006, p. 18.

Procedure, the "*expertise amiable*" or "*expertise officieuse*" results in an expert opinion which is based on the sole initiative of the litigants. This can be submitted before or during the legal proceedings. Insurance companies, for example, often require an "*expertise amiable*" or an "*expertise officieuse*" in order to ascertain the responsibility of their clients or to have the damage incurred assessed. In addition, the litigants tend to make use of it in the course of a counter-assessment in order to contradict the original expert opinion. A party involved in the process can also obtain such a report at the pre-procedural stage in order to assess their own chances of success. The expert opinion then serves as a first piece of evidence that can be presented to the judge.

If the expert opinion is only commissioned by one litigant, it is referred to as an "*expertise officieuse*"; however, if it is an expert opinion that is obtained in agreement with those involved in the legal process, it is referred to as "*expertise amiable*". It should be noted that the Court of Cassation often omits a precise demarcation. Since the expert is not appointed by the judge, he/she is not obliged to comply with the legal provisions of the Code of Civil Procedure. Moreover, such an opinion is not bound to the principle of the contradictory procedure. The expert is also not obliged to comply with the principles of impartiality expected of a court expert. It is therefore not unusual for the experts to be appointed in a situation of economic dependence on one of the parties. The Court of Cassation's case-law considers that both the "*expertise amiable*" and the "*expertise officieuse*", even if they were prepared contrary to the principle of the contradictory procedure, can be used as evidence in the proceedings, provided that they can be discussed by both parties in the oral hearings.

However, even if the results of the opinion obtained are not binding on the judge, he/she may, provided that the basic principle of the contradictory procedure has been observed, incorporate them into his or her decision and base his or her judgment on them. For example, the first Civil Chamber of the Court of Cassation had rejected a judgment of the Court of Appeal, which stated that an "*expertise amiable*" could not be introduced into the process due to disregard for the principle of the adversarial procedure. In its judgment, the Court of Cassation invoked Art. 16 of the Code of Civil Procedure and the fact that the expert's report was properly introduced into the oral proceedings and was thus subject to contradictory discussion. The second Civil Chamber of the Court of Cassation argued similarly in a judgment in which the Court of Appeal relied on documents resulting from a non-contradictory opinion but which were duly brought before the court. In this case, the defendant himself/herself had filed an appeal against the expert opinion, but had not submitted any evidence to the contrary. Similarly, the Third Civil Chamber and the Commercial Chamber of the Court of Cassation ruled that the submission of the opinion in the oral proceedings does not preclude its use, as the principle of the adversarial procedure was thereby observed. In addition, the court appointed expert may refer to the results of an "*expertise officieuse*" in his or her own report, provided that these findings could previously be discussed by the parties to the proceedings in a contradictory debate.

In criminal investigations, the law allows the public prosecutor's office or police officers to appoint "*any qualified person*" to carry out such measures, which may also be ordered by an investigating judge pursuant to Art. 156 of the Code of Criminal Procedure (cf. Art. 60 and 77-1 of the Code of Criminal Procedure).⁴⁴ This is interpreted in a broad sense and covers not only directors of laboratories but also tax officials.⁴⁵ However, it is preferable to appoint experts who are registered in the lists according to Art. 157 of the Code of Criminal Procedure.

a) Remuneration

With regard to the determination of the expert's remuneration, a distinction must be made between criminal and civil proceedings.

⁴⁴ Cf. in addition Cour de cassation (Court of Cassation), Cass. crim., ruling of 14 September 2005, in: Bull. crim., n° 226, RSC 2006, 412 with comments by Buisson.

⁴⁵ Cf. examples and case-law in Ambrose-Castérot/Bonfils, Procédure pénale, 1st edition, 2011, PUF, Paris, recital 373, footnote 5.

(1) Civil proceedings

In civil proceedings, the fees of the experts are generally determined by the judge who appointed them.⁴⁶ However, a two-stage procedure is used. First of all, the judge who commissions the expert opinion or the judge in charge of the supervision of the expert shall, in accordance with Art. 269 of the Code of Civil Procedure, determine the amount of an advance for the remuneration when appointing the expert.⁴⁷ The amount of the fee to be deposited should be as close as possible to the judge's foreseeable final remuneration (Art. 269 sentence 1 of the Code of Civil Procedure). This serves in particular to protect the parties to the proceedings.⁴⁸ In this way, they should be able to assess whether obtaining the evidence of the expert opinion is compatible with the interest of the dispute, in order to be able to dispense with it if necessary and thus minimize the risk of legal costs being borne.⁴⁹ At the same time, the judge will specify the party or parties who must deposit the advance payment at the clerk's office of the court and set a reasonable time limit for it.⁵⁰ If the advance is not paid on time or in the manner provided for, the appointment of the expert is invalid or lapses (Art. 271 of the Code of Civil Procedure). An exception to this rule shall apply if, at the request of one of the parties, the judge authorizes the extension of the period on the basis of a legitimate reason.⁵¹

After submission of the final version of the report to the court, the judge determines the final remuneration of the expert (cf. Art. 284 para. 1 of the Code of Civil Procedure).⁵² With regard to the determination of the specific amount of the remuneration, there is no statutory scale of fees for court appointed experts. However, certain recommendations and guidelines are available to judges, which they can consult at any Court of Appeal.⁵³ According to the wording of the law, the court must take into particular account the diligence of the work, compliance with deadlines set by the court and the quality of the report (cf. Art. 284 para. 1 of the Code of Civil Procedure) when determining the remuneration. The jurisprudence specified that the technical degree of difficulty of the expert opinion to be prepared must also be taken into account.⁵⁴ Furthermore, the remuneration must be determined taking into account the tasks which the expert has personally performed, the hours worked and the hourly rate for his or her field of activity.⁵⁵ Another factor should be the benefit of the expert opinion for the procedure.⁵⁶ The amount in dispute, however, is irrelevant.⁵⁷

⁴⁶ Available at: <http://www.metiers.justice.gouv.fr/la-justice-hors-de-la-fonction-publique-12684/expert-judiciaire-26859.html>.

⁴⁷ This decision does not require a justification, cf. Cour de cassation (Court of Cassation), Cass. soc., ruling of 2 April 1981, in: Gaz. Pal. 1981, 2, Pan. 315.

⁴⁸ In order to guarantee this protection, in practice a clause is often included in the contract concluded with the expert, according to which the expert must draw up a cost estimate at the beginning of his/her work and inform the judge controlling him/her and the parties in good time of possible cost increases.

⁴⁹ Boulard, La rémunération de l'expert (brève analyse des textes), available at: http://cejpcar.org/wp-content/uploads/2015/10/honoraires2_26janv2010_txt_BOULARD.pdf.

⁵⁰ A party to the proceedings to which legal aid has been granted is not obliged to pay an advance (cf. Cour de cassation [Court of Cassation], Cass. civ. 2e, ruling of 26 February 1992, in: Recueil Dalloz-Sirey 1992, 495 with comment by Laroche de Roussane; Conseil national des compagnies d'experts de justice, La rémunération de l'expert – Etat des lieux, available at: http://cejpcar.org/wp-content/uploads/2015/10/Honoraires_expert_CNCEJ_Fevrier2010.pdf).

⁵¹ In this case, the principle of contradictory procedure has to be observed, cf. Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 8 February 2007, in: Bull. civ. II, n° 24.

⁵² Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 7 November 1984, in: Bull. civ. II, n° 161.

⁵³ It is inadmissible to set the remuneration solely on the basis of these guidelines, without taking into account the criteria laid down by law, such as the diligence of the work, the quality of the expert opinion, etc. (cf. Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 4 October 2001, in: Gaz. Pal. 2002, 309 with comment by Olivier.

⁵⁴ Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 4 October 2001, file n° 98-22084, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007417683>.

⁵⁵ Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 22 March 2007, file n° 06-10061, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007506758>.

⁵⁶ Boulard, La rémunération de l'expert (brève analyse des textes), available at: http://cejpcar.org/wp-content/uploads/2015/10/honoraires2_26janv2010_txt_BOULARD.pdf.

⁵⁷ Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 4 October 2001, file n° 98-22084, available at: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007417683>.

In relation to the advance on costs originally set according to Art. 269 of the Code of Civil Procedure), the judge may also deviate from it downwards and thus make an *ex officio* correction to this decision. A reduction of the remuneration shall be considered in particular if the expert has not worked carefully or has carried out unnecessary examinations or travel.⁵⁸ If the remuneration of the expert is to be reduced compared to the amount laid down in the decision under Art. 269 of the Code of Civil Procedure, the competent judge must first inform the expert and give him/her the opportunity to comment (Art. 284 para. 3 of the Code of Civil Procedure).⁵⁹

In principle, the judge is free to decide whether to obtain an expert opinion and to select an expert. However, the decision ordering the expert opinion may be appealed, irrespective of the judgment in the main case, after approval by the President of the respective Court of Appeal, provided that there is a serious and justified reason (cf. Art. 272 para. 1 of the Code of Civil Procedure).⁶⁰ Only the President of the Court of Appeal is entitled to examine the motives put forward for the existence of such a reason.⁶¹ The same applies pursuant to the determination of the final remuneration of the expert pursuant to Art. 284 of the Code of Civil Procedure (Art. 724 para. 1 of the Code of Civil Procedure). However, this is different for decisions regarding the advanced deposits under Art. 269 sentence 1 of the Code of Civil Procedure, as follows from the inversion of Art. 724 para. 1 of the Code of Civil Procedure.⁶²

(2) Criminal proceedings

While there are no specific legal regulations for the compensation of the expert for civil proceedings, such regulations are provided for in criminal procedure law.⁶³ These are laid down in Art. R.106 et seq. of the Code of Criminal Procedure. First, the determination of the costs of preparing the expert opinion depends on the domicile of the expert (Art. R.106 para. 1 of the Code of Criminal Procedure). In principle, the costs of the expert opinion shall not exceed the amount of EUR 460.00 (Art. R.107 para. 1 of the Code of Criminal Procedure). If higher costs are foreseeable, the appointed expert must inform the court which appointed him/her before commencing his/her work. Except in urgent cases, the expert's estimate of the higher costs shall first be communicated to the public prosecutor's office. The latter shall then be given the opportunity to comment within a period of five days and, if necessary, to examine the additional expenditure requested. The case-law construes the provision of Art. R.107 para. 1 of the Code of Criminal Procedure very strictly. In the Court of Cassation's view, for example, any unjustified exceeding of the legally stipulated sum of EUR 460.00 is prohibited.⁶⁴

Art. R.110 of the Code of Criminal Procedure contains regulates the reimbursement of travel expenses. The amount of the allowance shall be determined by the costs which a government official would be reimbursed. If the expert has to testify before the inquisitor or during the main hearing, he/she shall be granted a fixed allowance in addition to the travel and accommodation costs, which shall be calculated in accordance with an allowance specified in Art. R.112 para. 1 of the Code of Criminal Procedure.⁶⁵ In

⁵⁸ Boulard, La rémunération de l'expert (brève analyse des textes), available at: http://cejpcar.org/wp-content/uploads/2015/10/honoraires2_26janv2010_txt_BOULARD.pdf.

⁵⁹ Cour d'appel (Court of Appeal) Bordeaux, ruling of 8 May 1981, in: Gaz. Pal. 1981, 2, 675 with comment by Thorin.

⁶⁰ This is the case, for example, if the expert's mandate includes the performance of the judge's own tasks (vf. Cour d'appel [Court of Appeal] Grenoble, ruling of 4 March 1975, in: Gaz. Pal. 1975, 2, 776 with comment by Barbier), if the judge misjudges the principle of the adversarial procedure (cf. Cour d'appel (Court of Appeal) Paris, ruling of 20 November 1987, in: Bull. ch. avoués 1988, 1, 19) or if the expert opinion obtained is obviously useless for the procedure (cf. Cour d'appel [Court of Appeal] Paris, ruling of 27 November 1985, in: Bull. ch. avoués 1986, 2, 72).

⁶¹ Cour de cassation (Court of Cassation), Cass. civ. 2e, ruling of 3 April 1978, in: Bull. civ. II, n° 107.

⁶² Cour d'appel (Court of Appeal) Paris, ruling of 3 December 1979, in: Gaz. Pal. 1980, 1, 254.

⁶³ Available at: <http://www.metiers.justice.gouv.fr/la-justice-hors-de-la-fonction-publique-12684/expert-judiciaire-26859.html>.

⁶⁴ Cour de cassation (Court of Cassation), Cass. crim., ruling of 17 January 2012, in: Bull. crim. 2012, n° 14.

⁶⁵ An allowance is determined by the following formula: $I = \text{EUR } 3.05 + (S \times 4)$, wherein "S" is the minimum inter-professional salary as fixed on 1 January of the current year.

addition, financial compensation for absenteeism may be granted, provided that this has been adequately explained.⁶⁶

Art. R.116 et seq. of the Code of Criminal Procedure contains special regulations for certain fields (such as economic fraud, forensic medicine, toxicology, biology). According to Art. R.116 of the Code of Criminal Procedure, it is allocated to each expert appointed in accordance with the laws and regulations on the suppression of commercial fraud, for the analysis of each sample, including laboratory costs an amount of EUR 12.96 for the first sample and EUR 7.17 for subsequent samples in the same case. The fees, which correspond to the ones specified in Art. R.117 to R.120 of the Code of Criminal Procedure (e.g. autopsy, psychiatric opinion), shall be carried out with reference to the activities provided for in Art. L.162-14-1 of the Social Security Act on the basis of certain coefficients.⁶⁷ The Code of Criminal Procedure states in particular:

- Each doctor appointed shall receive remuneration or fees calculated by reference to the conventional rates of fees fixed on the basis of Art. L.162-14-1 of the Social Security Code (*Code de sécurité sociale*), by applying to the values of the key letters of social security coefficients determined by decree of the Minister for Justice and the Minister for the Budget (Art. R.117 of the Code of Criminal Procedure). The ministerial decree distinguishes the key letters and the applicable coefficients according to the nature and scope of the prescribed acts. The obligation provided for in Art. L.311-2 of the Social Security Code which applies to the persons mentioned in no. 3 of Art. D.311-1 of the Social Security Code may be taken into account. Where appropriate, one or more additional allowances depending on the place, day or time of the mission may be allocated.
- Also the maximum rates relating to toxicological and biological analyses are set by reference to the conventional rates of fees set on the basis of Art. L.162-14-1 of the Social Security Code (Art. R.118 of the Code of Criminal Procedure).
- Each qualified medical expert or radiologist, regularly appointed or commissioned, shall be allocated a remuneration or fee calculated with reference to the rates fixed by the common classification of medical procedures (cf. Art. R.120 of the Code of Criminal Procedure). The rates for acts specific to judicial investigations are fixed by a decree of the Minister of Justice and the Minister in charge of the budget according to the nature of the services.
- In cases where motor vehicles are to be investigated after traffic accidents, the law lays down specific amounts of compensation (cf. Art. R.120-1 of the Code of Criminal Procedure). It is allocated to each expert, for a complete mechanical examination relating to one or more motor vehicles, appointed by a court in certain departments, following a traffic accident an amount of EUR 50.31 or respectively, EUR 45.73, depending on the department. This excludes simple examinations relating only to specific parts of the vehicle, and excludes any compensation for drawing up plans, taking photographs and subsistence expenses.
- The same provisions which concern the remuneration of doctors or toxicologists also applies to psychologists (cf. Art. R.120-2 of the Code of Criminal Procedure).

The legally established costs of the expert opinion also include those for the preparation and submission of the report and, where appropriate, the oath (Art. R.106 of the Code of Criminal Procedure). Should the expert opinion not have been submitted on time or show other deficiencies, the remuneration of

⁶⁶ The additional allowance is calculated according to the formula $I = S \times D$, in which "S" is the minimum inter-professional salary as fixed on 1 January of the current year and "D" the hourly duration of work, which may not exceed eight hours per working day.

⁶⁷ Cf. Annex to Art. A43-6, available at:

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=68C6DB09DF4BE27569FFC7FD7429925B.tplgfr30s_3?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI000034100413&dateTexte=20180522&categorieLi en=id#LEGIARTI000034100413.

the expert can be reduced. If a complete revision of the expert opinion is required, the entire remuneration may be refused (cf. Art. R.109 of the Code of Criminal Procedure).

2. Practice

a) Selection

In the process of the selection of experts, judges usually rely on criteria such as the quality of expert opinions prepared in the past in other proceedings, the expertise of the respective expert or the invoiced costs. Information regarding the latter selection criterion can be found in the final royalty statement. The recommendation of "*Magistrats rédacteurs*" also plays an important role. This applies in particular to judges deciding in summary proceedings.

In principle, the judges are not limited in the selection of experts to those listed on a directory deposited at the Courts of Appeal. This means that also experts who have not previously registered can be appointed. A justification for the selection of the concrete expert is not required by law.

With regard to "*expertise amiable*" and "*expertise officieuse*", it should be noted that the question of whether such a procedure is chosen is initially discussed by the parties. Given the case that the parties choose such an expert, in practice there rarely seem to be problems with regard to the impartiality of the appointed expert. Rather, this is subject to legal regulations, so that the judge who decides on the case can intervene at any time in the event of any concerns in this regard. Indications of possibly impartial behavior of the expert are usually obtained by judges from the parties concerned themselves.

b) Remuneration

The amount of the expert's remuneration is determined in practice on the basis of the quality of the work delivered by the expert and the actual amount of work involved. The number of working hours must be justified by the assessor. The guidelines and recommendations available to the judges, which are deposited with each Court of Appeal, are also regularly observed. On average, the costs of a judicially ordered expert opinion in France amount to approximately EUR 2,000.00. In almost all cases, the final remuneration fixed by the judge corresponds to the amount claimed by the expert.⁶⁸ The same applies to the conformity of the advance for the remuneration of the expert to the determination of the final remuneration of the expert.

It is noteworthy, however, that in the majority of cases in which an expert is to be appointed, one of the parties to the proceedings, after fixing the advance for the remuneration of the expert pursuant to Art. 269 of the Code of Civil Procedure, refrains from obtaining an expert opinion. On the other hand, those cases in which an expert is actually appointed have an extremely low rate of appeal concerning the determination of the remuneration.

3. Résumé

Similar to Germany, regulations exist in France with regard to both the selection and the remuneration of the expert. Also, the implementation seems to work well. However, as in Germany, it is criticized that in practice it is hardly possible to verify the sum of the hours worked by the expert. A correction of the remuneration is possible only in the case of obvious discrepancies between the stated time and the quality of the final report.

In the opinion of practitioners, the level of expected court costs is becoming increasingly transparent due to existing regulations in this regard, which at the same time increases the predictability of the expected legal costs for the parties. Overall, it can be stated that the costs incurred for the preparation of an expert opinion are only in rare cases a deterrent for parties interested in filing a lawsuit.

⁶⁸ Arnault/Krief, Le coût des expertises judiciaires civiles, in: INFOSTAT JUSTICE, n° 66, May 2003, p. 2

III. United Kingdom

Unlike in continental European countries, the legal system in the United Kingdom is characterized by the legal system of common law. This is based not only on laws, but also to a large extent on judicial verdicts (so-called precedents). Legislation and legal development is therefore the responsibility of the courts. Against this background, it should be noted that only a few legal provisions, such as the Civil Procedure Rules or Criminal Procedure Rules, exist with regard to the law of evidence.⁶⁹ According to Rule 1.1 (1) of the Civil Procedure Rules, these rules form a new procedural code whose primary objective is to enable and facilitate the court to conduct proceedings at reasonable cost. The Civil Procedure Rules apply in all proceedings in the County Court, the High Court and the Civil Division of the Court of Appeal, Rule 2.1 (1) of the Civil Procedure Rules. However, certain types of proceedings listed in Rule 2.1 (2) are excluded, such as insolvency proceedings or family matters. In criminal matters, the Criminal Procedure Rules apply in all criminal cases in Magistrates' Courts and the Crown Court, in extradition cases in the High Court and in all cases in the Criminal Division of the Court of Appeal (cf. Rule 2.1 (1) of the Criminal Procedure Rules).

1. Theory

In the UK, experts are rarely appointed by the court. In most cases, the parties to the proceedings appoint an independent expert to support their legal position. In this context, however, it should be noted that the reference to the evidence of the expert opinion should be limited to those cases where this is reasonably necessary for the decision of the court.⁷⁰

a) Selection

As already mentioned, experts are only appointed by the court in exceptional cases. Rather, the rule is that each party appoints its own experts in both civil and criminal matters. However, this does not mean that the expert should merely strengthen the position of the party commissioning him/her. Rule 35.3 of the Civil Procedure Rules and Rule 19.2 (2) of the Criminal Procedure Rules expressly clarify that the expert is appointed exclusively in support of the court, irrespective of the party that commissions or pays him/her.

The aim of supporting the court is substantiated in particular by established guidelines. These are generally known and recognized, particularly with regard to the selection of experts.⁷¹ The most important criteria with regard to the selection of the expert is his/her qualification and experience in the field concerned.⁷² Furthermore, it is essential for the appointment of the expert that he/she is independent, impartial and objective.⁷³ The judge, as the head of the proceedings, shall ensure that these selection criteria are observed. This is particularly evident from the provisions of Rule 35.4 (1) of the Civil Procedure Rules and 19.3 (4) of the Criminal Procedure Rules. Accordingly, no party to the proceedings may appoint an expert or submit as evidence an expert's report without the prior approval

⁶⁹ Cf. parts 31 to 40 of the Civil Procedure Rules, available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules>, sowie Parts 16 bis 23 der Criminal Procedure Rules, abrufbar unter: <https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>.

⁷⁰ Ministry of Justice, Civil Procedure Rules, Part 35 - Experts and Assessors, rule 35.1, available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35>.

⁷¹ Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen Österreichs / Bundesverband öffentlich bestellter und vereidigter sowie qualifizierter Sachverständiger e.V. / Institut für Sachverständigenwesen e.V., Das Sachverständigenwesen in Europa - Aktuelle Fragen und Antworten, 1st edition 2006, p. 18, available at: https://www.ifsforum.de/fileadmin/user_upload/Das_SV-Wesen_in_Europa.pdf.

⁷² Civil Justice Council, Guidance for the instruction of experts in civil claims, recital 16, available at: <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/experts-guidance-cjc-aug-2014-amended-dec-8.pdf>.

⁷³ Ministry of Justice, Practice Direction 35 - Experts and Assessors, para 2.2, available at: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35/pd_part35.

of the court.⁷⁴ With the request for approval, the party must provide the court with a specific statement of the subject matter concerned and the extent to which the evidence is actually required, as well as an estimate of costs for the desired expert opinion.

Following the examination of the application, the competent court shall decide on the appointment of the expert. If it approves the appointment, it shall refer to the expert designated by the party or - if the party had not proposed a specific expert - to the subject area concerned.

Furthermore, the parties to the proceedings are encouraged at the pre-litigation stage to consider to what extent expenses can be minimized in relation to the preparation of an expert report. This can be done, for example, by appointing a "*single joint expert*", who is engaged and paid jointly by the parties whether instructed jointly or separately, or an "*agreed expert*", who is agreed upon by both parties but instructed and paid for by only one party.⁷⁵ In particular, this is intended to limit the amount of procedural costs by avoiding the preparation of several expert opinions.

If the parties cannot agree on one expert, the party seeking the expert evidence should provide the other party with a list of several experts in the relevant subject area. Within two weeks of receipt of this list, the opposing party may indicate in writing an objection to one or more of the experts listed. Subsequently, the party requesting the report shall appoint one of the experts on the list against whom no objection has been lodged. If the other party objects to all the listed experts, the party seeking for expert evidence may then instruct an expert of its own choice. However, in the event of proceedings being initiated, it is always for the court to examine whether the parties acted in an abusive manner with regard to the appointment or refusal of the expert.

The so-called "*soft tissue injury claims*" represent one case of the expert appointed by the court. Paragraph 2.6 of Practice Direction 35 provides that with respect to such claims the first report to be prepared must be obtained from an accredited medical expert within the meaning of Paragraph 1.1 (A1) of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents of 31 July 2013.⁷⁶

b) Remuneration

Under British law, the party which offers and commissions the expert as evidence is responsible for the remuneration of the expert. However, the procedure is based on the rule that the party unsuccessful in the procedure must bear the costs of the winning party (cf. principle "*costs follow the event*"). These costs usually do not cover all the costs on which the expert had agreed with one party, but rather only part of them. For this reason, the party seeking the expert evidence is the claimant of the expert for the remaining share, even if it prevails completely.⁷⁷

With regard to the concrete determination of the remuneration of experts, there is no legal provision in the United Kingdom for experts appointed by the court, such as a scale of fees. The same applies to experts commissioned by a public body or privately.⁷⁸

⁷⁴ Recital 5 of the Guidance for the instruction of experts in civil claims des Civil Justice Council seems to be inconsistent in this matter. According to this, the prior approval of the appointment of an expert by the court is not generally required.

⁷⁵ An exception is given with regard to the Crown Prosecution Service. The latter is responsible for the prosecution and the associated appointments of experts. The Crown Prosecution Service has its own fee schedule, which sets certain fees to be paid.

⁷⁶ A directory of accredited experts can be found online at: www.medco.org.uk.

⁷⁷ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p.10, available at: http://www.euroexpert.org/fileadmin/euroexpert/documents/downloads/Remuneration_Study_2016.pdf.

⁷⁸ An exception is given with regard to the Crown Prosecution Service. The latter is responsible for the prosecution and the associated appointments of experts. The Crown Prosecution Service has its own fee schedule, which sets certain fees to be paid.

(1) Payment basis

(aa) Market forces as a basis for remuneration

In the United Kingdom, the level of the expert's remuneration is generally determined by market forces, i.e. supply and demand. In concrete terms, this means that the procedural party and the expert freely agree on the fee, depending on the amount the party is prepared to pay for the preparation of the expert opinion or the expert is prepared to undertake the commission. Factors such as subject area, degree of specialization, experience, qualifications, and seniority of the expert or complexity of the case play a decisive role in the calculation of the respective rates (daily or hourly rates, usually combined with a limitation of the number of hours as a maximum sum⁷⁹). The latter significantly limits the selection of possible experts, which can lead to a not inconsiderable increase in the hourly rate against the background of the principle of "supply and demand". The complexity of the case also affects the number of working hours required. However, it should be observed that the agreed rates are not disproportionate to the work to be carried out by the expert.⁸⁰

Also the Guidance for the instruction of experts in civil claims of the Civil Justice Council expressly emphasizes that experts should be guided by the principle of proportionality. This means in particular that the costs incurred in preparing the opinion should not be disproportionate to the value and significance of the procedure.⁸¹

(bb) Exemptions

The major exception to the principle of market forces exists with regard to expert opinions financed by public funds. This primarily covers those cases in which parties cannot afford to pay for legal assistance and therefore are granted legal aid by the state.⁸² Under such circumstances, the remuneration is calculated according to certain fee regulations so as not to burden the state treasury with exorbitant fees. However, even in this context, higher remuneration can be paid in exceptional cases.⁸³ This applies in particular in cases where the subject matter is so complex that the number of experts available is limited. However, the derogation from the scale of fees must be approved in advance.⁸⁴

Furthermore, in cases of the so-called "soft tissue injury claim", fixed costs are provided for the preparation of an expert opinion.⁸⁵ The cost of obtaining a further report from an expert not listed in rule 35.4 (3C) (a) to (d) of the Civil Procedure Rules is not subject to rules 45.19 (2A) (b) or 45.29 (2A) (b) of the Civil Procedure Rules, which establishes certain fees in terms of amount. However, both the appointment of this expert and the costs must be separately justified.

Another exception is stated in Rule 35.4 (4) of the Civil Procedure Rules. Accordingly, it is at the discretion of the court to limit the amount of fees and costs in connection with the preparation of an expert opinion,

⁷⁹ It is increasingly being argued that experts should be remunerated on the basis of a fixed amount agreed in individual cases prior to commencement of their work. This is intended to avoid any excessive costs for the party seeking the expert evidence or the party failing in the proceedings.

⁸⁰ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p. 10.

⁸¹ Civil Justice Council, Guidance for the instruction of experts in civil claims des Civil Justice Council, recital 10.

⁸² In practice, legal aid is granted only in rare cases, especially in criminal and family matters.

⁸³ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p. 43.

⁸⁴ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p. 27.

⁸⁵ Cf. para. 2.6 of the Practice Direction 35 - Experts and Assessors.

which would have to be borne by the party failing in the proceedings.⁸⁶ This should avoid an immense cost risk for economically less favored parties and thus guarantee their access to justice.⁸⁷

(2) Additional remuneration

Against the background of contractual autonomy, an agreement on the payment of additional remuneration between the party seeking the expert report and the expert is in principle freely possible. This usually involves the reimbursement of actual, reasonable and proportionate expenses incurred by the expert.⁸⁸ This includes travel costs.⁸⁹ Although the expert is generally entitled to receive support from sufficiently qualified assistants, this cannot be remunerated separately. Rather, it is part of the originally agreed fee of the commissioned expert.⁹⁰ If the deployment of auxiliary staff is able to reduce the costs of preparing the expert opinion, the expert should make use of their support.

2. Practice

a) Selection

Due to the fact that in the majority of cases experts are appointed and commissioned directly by the parties themselves, there is hardly any relevant experience with regard to the procedure concerning the selection of experts.

b) Remuneration

The same applies to the determination of the remuneration. This is usually agreed by the respective party with the commissioned expert. In principle, it can be observed that different fees are charged by the experts for civil and criminal proceedings, whereby usually lower fees are incurred for the preparation of expert opinions in the area of criminal matters. However, some experts involved in both civil and criminal proceedings may charge the same fees for both types of proceedings.

Against the background of the free determination of the remuneration by the respective party and the expert in individual cases, a wide range of remunerations can be recorded in practice. According to recent surveys, the fees range between GBP 30.00 and GBP 699.00 per hour, with an average hourly rate of approximately GBP 174.00.⁹¹ Although attempts are made in practice to control the amount of the fees, the judge has no prescribed tariffs at his disposal.

3. Résumé

Exact procedures for the selection of the expert or the determination of his remuneration are difficult to comprehend under UK law. Due to numerous individual decisions and the outstanding importance of the respective parties to the proceedings, both in terms of the selection and the determination of the remuneration, there is a not inconsiderable risk that economically more favored parties may have a decisive influence on the outcome of the proceedings. On the other hand, economically weaker plaintiffs may be discouraged from asserting their rights.

⁸⁶ The same applies with regard to the appointment of a so-called „single joint expert“, cf. Rule 35.8 (3), (4) of the Civil Procedure Rules.

⁸⁷ Cf. also the possibility of issuing a so-called „costs capping order“ according to Rule 3.19 (4), (5) of the Civil Procedure Rules and the Practice Direction 3F - Costs Capping.

⁸⁸ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p. 31.

⁸⁹ The usual reimbursement is GBP 0.45 per mile for the use of a motor vehicle.

⁹⁰ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p. 34.

⁹¹ EuroExpert, Remuneration of Experts in Europe - A Comparative Study of Remuneration Systems in Europe, 2016 Update, p. 37

IV. Summarizing evaluation

In contrast to the legal system of common law, continental European legal systems have very detailed regulations regarding the selection and remuneration of experts. The similarities between the regulations established in Germany and France in this respect cannot be dismissed. It is also striking that practitioners of both legal systems complain of similar grievances. The main reason for this is the lack of verifiability of the working hours submitted by the expert. Against the background of the varying degree of difficulty and the amount of work involved, it seems hardly possible to solve this problem. Only with regard to standard constellations (e.g. blood sampling), an average of required working time can be specified. The German legislator has implemented this (at least in large parts) by means of detailed concrete schedules of fees. Compared to other legal systems, this ensures greater transparency of legal costs and can minimize the risk of litigants being dissuaded from asserting their rights as far as possible.

Appendix 1 - Remuneration of experts in Germany

According to section 9 para. 1 of the Justice Remuneration and Compensation Act the expert receives a fee for every hour

| in the fee group | in the amount of ... euros |
|------------------|----------------------------|
| 1 | 65 |
| 2 | 70 |
| 3 | 75 |
| 4 | 80 |
| 5 | 85 |
| 6 | 90 |
| 7 | 95 |
| 8 | 100 |
| 9 | 105 |
| 10 | 110 |
| 11 | 115 |
| 12 | 120 |
| 13 | 125 |
| M 1 | 65 |
| M 2 | 75 |
| M 3 | 100 |

Annex 1 to section 9 para. 1 of the Justice Remuneration and Compensation Act

| No. | Subject area designation | Fee group |
|-----|---|-----------|
| 1 | Waste materials - unless subject area 3 or 18 - including end-of-life vehicles and equipment | 11 |
| 2 | Acoustics, noise protection - unless subject area 4 | 4 |
| 3 | Contaminated sites and soil protection | 4 |
| 4 | <i>Construction - unless subject area 13 - including technical building equipment</i> | |
| | 4.1 Planning | 4 |
| | 4.2 Manual-technical execution | 2 |
| | 4.3 Determination, determination and assessment of causes of damage - unless subject area 4.1 or 4.2 -, construction contracts, construction operation and invoicing of construction services | 5 |

| No. | Subject area designation | Fee group |
|------|---|-----------|
| 4.4 | Building materials | 6 |
| 5 | Professional knowledge and activity analysis | 10 |
| 6 | <i>Business administration</i> | |
| 6.1 | Company valuation, business interruption and relocation losses | 11 |
| 6.2 | Investments and private financial planning | 13 |
| 6.3 | Taxation | 3 |
| 7 | Valuation of properties | 6 |
| 8 | Determining the cause of fire | 4 |
| 9 | Stamps and coins | 2 |
| 10 | <i>Data processing, electronics and telecommunications</i> | |
| 10.1 | Data processing (hardware and software) | 8 |
| 10.2 | Electronics - unless subject area 38 - (in particular measurement and control electronics) | 9 |
| 10.3 | Telecommunications (in particular telephone systems, mobile radio, transmission technology) | 8 |
| 11 | Electrical installations and equipment - unless subject area 4 or 10 | 4 |
| 12 | Vehicle construction | 3 |
| 13 | <i>Horticulture and landscaping, including sports facilities</i> | |
| 13.1 | Planning | 3 |
| 13.2 | Manual-technical execution | 3 |
| 13.3 | Determination and assessment of damages and causes - unless subject area 13.1 or 13.2 | 4 |
| 14 | Health trade | 2 |
| 15 | Graphic arts and crafts | 6 |
| 16 | Household and interior furnishings | 3 |
| 17 | Fees charged by architects and engineers | 9 |
| 18 | Emissions | 2 |
| 19 | Refrigeration - unless subject are 4 | 5 |
| 20 | Damages to and assessment of motor vehicles | 8 |
| 21 | Art and antiques | 3 |

| No. | Subject area designation | Fee group |
|------|--|-----------|
| 22 | Food chemistry and technology | 6 |
| 23 | Machinery and equipment - unless subject area 4, 10 or 11 | 6 |
| 24 | Medical technology | 7 |
| 25 | Rent and leases | 10 |
| 26 | Furniture - unless subject area 21 | 2 |
| 27 | Musical instruments | 2 |
| 28 | Radio and television equipment | 2 |
| 29 | Ships, water sports vehicles | 4 |
| 30 | Jewelry, jewels, pearls, gold and silverware | 2 |
| 31 | Writing and certificate investigation | 8 |
| 32 | Welding technology | 5 |
| 33 | Haulage, transport, warehousing | 5 |
| 34 | Blasting technique | 2 |
| 35 | Textiles, leather and furs | 2 |
| 36 | Animals | 2 |
| 37 | Determination of causes and reconstruction in the event of vehicle accidents | 12 |
| 38 | Traffic control and monitoring technology | 5 |
| 39 | <i>Surveying and cadastral services</i> | |
| 39.1 | Surveying | 1 |
| 39.2 | Other surveying and cadastral services | 9 |
| 40 | Actuarial mathematics | 10 |

| Subject of medical and psychological expertise | Fee group |
|--|-----------|
| <p>Simple expert assessments, in particular</p> <ul style="list-style-type: none"> - on charging issues, - on the reduction of the earning capacity after a mono injury, - on the fitness for a custodial sentence, the capacity to act in court or the capacity to be questioned - on the extension of guardianship. | M 1 |
| <p>Descriptive (actual state) assessment according to a standardized scheme without discussing special causal relationships with a simple medical prognosis and with an average degree of difficulty, in particular expert opinions</p> <ul style="list-style-type: none"> - in proceedings according to Volume IX of the Social Insurance Code (<i>Sozialgesetzbuch IX, SGB IX</i>), - on the reduction of the earning capacity and on disability, - on questions of forensic medicine and toxicology in connection with the determination of the unfit state to drive caused by alcohol, drugs, medication or diseases, - on medical or forensic questions with findings (e.g. in the case of injuries and other consequences of accidents), - to simple questions on the criminal responsibility without particular difficulties concerning the personality diagnostic, on the establishment or cancellation of a custody of persons of full age and the order of a reservation of consent according to section 1903 of the Civil Code (<i>Bürgerliches Gesetzbuch, BGB</i>) - on disputes over maintenance due to disability or incapacity for work or earning - on neurological-psychological questions in procedures according to Regulation on the Right to Drive (<i>Fahrerlaubnisverordnung, FeV</i>). | M 2 |
| <p>Expert opinions with a high degree of difficulty (expert opinions on special causal relationships and/or differential diagnostic problems and/or assessment of the prognosis and/or assessment of contentious causality issues), in particular expert opinions</p> <ul style="list-style-type: none"> - on the causal relationship in the event of problematic consequences of injury, - on medical malpractice, - in proceedings under the Victim Compensation Act (<i>Opferentschädigungsgesetz, OEG</i>), - in proceedings under the Law on Aid Measures for Persons Detained Outside the Federal Republic of Germany for Political Reasons (<i>Häftlingshilfegesetz, HGG</i>), - on the criminal responsibility with difficulties concerning the personality diagnostic, - in procedures for ordering a measure of rehabilitation and incapacitation (in procedures for driving disqualification on neurological/psychological issues), - on the crime prediction, - on the capability to testify, - on the capability of resistance, - in proceedings pursuant to sections 3, 10, 17 and 105 of the Juvenile Courts Act (<i>Jugendgerichtsgesetz, JGG</i>), - in hospitalization proceedings, - in proceedings according to section 1905 Civil Code, - in proceedings under the Transsexual Act (<i>Transsexuellengesetz, TSG</i>), - in proceedings to regulate custody or rights of access, - on contractual, testamentary or process capability, - on occupational diseases and the reduction of the ability to work in the event of special difficulties, - on forensic, toxicological and trace questions in connection with a final cause of death clarification, medical treatment errors or an assessment of legal culpability. | M 3 |

According to section 10 para. 1 of the Justice Remuneration and Compensation Act, the fee or the compensation of the expert or an expert witness is calculated in accordance with Annex 2, insofar as he/she provides services described in this Annex.

Annex 2 to section 10 para. 1 of the Justice Remuneration and Compensation Act

| No. | Description of service | Honorarium |
|---|---|------------|
| Section 1 Postmortem and autopsy | | |
| <i>Preliminary remark 1:</i> | | |
| <p>(1) The fee in the cases referred to in numbers 100, 102 to 106 shall include the report submitted for recording; in the cases referred to in numbers 102 to 106, the fee shall also include the preliminary report. The fee according to numbers 102 to 106 is paid separately to each person carrying out a postmortem examination.</p> <p>(2) Expenses for the use of external cold rooms, dissecting rooms and other facilities will be reimbursed separately up to an amount of 300 € if the use is required due to the great distance between the location of the body and the forensic medical institute.</p> | | |
| 100 | Inspection of a corpse, parts of a corpse, embryo or fetus or assistance in a judicial postmortem examination | 60.00 € |
| | for several services on the same occasion but at most | 140.00 € |
| 101 | Preparation of a report which must be submitted in writing or be declared for record | 30.00 € |
| | for several services on the same occasion but at most | 100.00 € |
| 102 | Post mortem | 380.00 € |
| 103 | Postmortem under particularly unfavorable external conditions: The honorarium 102 amounts to | 500.00 € |
| 104 | Postmortem under other particularly unfavorable conditions (condition of the corpse, etc.): The honorarium 102 amount to | 670.00 € |
| 105 | Necropsy of parts of a corpse or opening of an embryo or non- viable fetus | 100.00 € |
| 106 | Necropsy or opening under particularly unfavourable conditions: The honorarium 105 amount to | 140.00 € |

| No. | Description of service | Honorarium |
|---|---|-------------------|
| Section 2 Findings | | |
| 200 | Issue of a findings certificate or written information without further expert opinion | 21.00 € |
| 201 | The service of the kind mentioned in number 200 is extraordinarily extensive: The honorarium 200 amount to | up to 44.00 € |
| 202 | Certificate of a medical finding with a short expert opinion requested by the referring authority or form report if the questions are limited to prehistory, information and findings and only require a short expert opinion | 38.00 € |
| 203 | The performance of the kind mentioned in 202 is extraordinarily extensive: The honorarium 202 amounts to | up to 75.00 € |
| Section 3 Examinations, blood sampling | | |
| 300 | Examination of food, consumer goods, pharmaceuticals, air, gases, soil, sewage sludge, water or waste water and the like and a brief written expert opinion: The honorarium for each individual determination per sample amounts to | 5.00 € to 60.00 € |
| 301 | The performance of the kind mentioned in number 300 is exceptionally extensive or difficult: The honorarium 300 amounts to | up to 1,000.00 € |
| 302 | Microscopic, physical, chemical, toxicological, bacteriological, serological examination if the test material comes from humans or animals: The honorarium amounts to per organ or body fluid The honorarium includes the material used, as far as low-value materials are concerned, and a short expert opinion. | 5.00 to 60.00 € |
| 303 | The performance of the kind mentioned in number 302 is exceptionally extensive or difficult: The honorarium 302 amounts to | up to 1,000.00 € |

| No. | Description of service | Honorarium |
|---|---|-------------------|
| 304 | Preparation of a DNA sample and its verification for suitability (e.g. high molecular weight, human origin, degree of degradation, control of digestion) The honorarium includes the material used, as far as low-value materials are concerned, and a short expert opinion. | up to 205.00 € |
| 305 | Electrophysiological examination of a human being The honorarium includes a brief expert opinion and the costs associated with the examination. | 15.00 to 135.00 € |
| 306 | Raster-electronic examination of a human being or a corpse, also with analysis additive The honorarium includes a brief expert opinion and the costs associated with the examination. | 15.00 to 355.00 € |
| 307 | Blood sampling The honorarium includes a record of the determination of identity. | 9.00 € |
| Section 4 Descent report | | |
| <i>Preliminary remark 4:</i> | | |
| <p>(1) The fee covers the entire activity of the authorized expert including all expenses with the exception of value added tax and with the exception of expenses for taking samples by persons commissioned by the authorized expert, unless otherwise specified. The fee also includes the cost of preparing the written expert opinion and three copies.</p> <p>(2) The fee for services of the type specified in Section M III 13 of the table of costs for medical services (Annex to the Scale of Fees for Doctors [<i>Gebührenordnung für Ärzte, GOÄ</i>]) shall be calculated by applying this table of costs accordingly at 1.15 times the fee rate. Section 4 para. 2 sentence 1, para. 2a sentence 1, para. 3 and 4 sentence 1 and section 10 of the Scale of Fees for Doctors (<i>Gebührenordnung für Ärzte, GOÄ</i>) apply accordingly.</p> | | |
| 400 | Preparation of the expert opinion The honorarium includes 1. the administrative handling, in particular the organization of sampling, and 2. the written opinion, if necessary with bio-statistical evaluation. | 140.00 € |

| No. | Description of service | Honorarium |
|-----|---|----------------|
| 401 | <p>Bio-statistical evaluation, if the potential father is not available for the examinations and other persons related to him are involved in the evaluation in his place (case of deficiency): per person</p> <p>If the expert commissions another person to carry out the bio-statistical evaluation in a case of deficiency, the expenses incurred for this shall be reimbursed to him/her, notwithstanding the preliminary remark 4, paragraph 1, first sentence.</p> | 25.00 € |
| 402 | <p>Taking of a genetic sample including the transcript as well as the qualified education according to the Genetic Diagnostics Act (Gendiagnostikgesetz, GenDG): per person</p> | 25.00 € |
| | <p>Examination by</p> <ol style="list-style-type: none"> 1. Short Tandem Repeat Systemen (STR) oder 2. diallelic polymorphisms: <ul style="list-style-type: none"> - diallelic polymorphisms: - Deletion/insertion polymorphisms (DIP) | |
| 403 | — up to 20 systems: per person | 120.00 € |
| 404 | — 21 up to 30 systems: per person | 170.00 € |
| 405 | — more than 30 systems: per person | 220.00 € |
| 406 | <p>At least two test kits are used, the examinations are carried out from independent DNA preparations and the parallel analysis methods used are expressly set out in the expert opinion: The honorariums according to numbers 403 to 405 are increased by</p> | 80.00 € |
| 407 | Preparation of a DNA sample from material other than blood or buccal swabs, including the suitability test: per person | up to 120.00 € |

Annex 2 - Abbreviations

| | |
|-------------------------------------|--|
| BGBI. | Bundesgesetzblatt (<i>Federal Law Gazette</i>) |
| BT-Drucks. <i>matter</i>) Bull. | Bundestag-Drucksache (<i>Bundestag printed Bulletin</i>) |
| Bull. ch. avoués | Bulletin de la Chambre des avoués près la Cour d'appel de Paris (<i>Bulletin of the Chamber of Attorneys at the Court of Appeal of Paris</i>) |
| Bull. crim. | Bulletin des arrêts de la chambre criminelle de la Cour de Cassation (<i>Bulletin of judgments of the Criminal Division of the Court of Cassation</i>) |
| Cass. civ. 2 ^e | Deuxième chambre civile de la Cour de Cassation (<i>Second Civil Division of the Court of Cassation</i>) |
| Cass. crim. | Chambre criminelle de la Cour de Cassation (<i>Criminal Division of the Court of Cassation</i>) |
| Cass. soc. | Chambre sociale de la Cour de Cassation (<i>Social Division of the Court of Cassation</i>) |
| cf. | confer |
| et seq. | and following |
| EUR | euro / euros |
| Gaz. Pal. | Gazette du Palais (<i>Gazette</i>) |
| GBP | British Pound |
| GRUR | Gewerblicher Rechtsschutz und Urheberrecht (<i>Intellectual Property and Copyright Law Journal</i>) |
| IBR | Immobilien- und Baurecht (<i>Real Estate and Construction Law Journal</i>) |
| MDR | Monatsschrift für Deutsches Recht (Monthly Journal for German Law) |
| NJOZ | Neue Juristische Online Zeitschrift (<i>New Legal Online Journal</i>) |
| NJW | Neue Juristische Wochenschrift (<i>New Legal Weekly Journal</i>) |
| NJW-RR | Neue Juristische Wochenschrift Rechtsprechungs-Report (<i>New Legal Weekly Journal Case Law Report</i>) |
| n° / no. | number |
| Pan. | panorama |
| para. | paragraph |
| p. | page |
| RSC | Revue de science criminelle et de droit pénal comparé (<i>Journal of Criminal Science and Comparative Criminal Law</i>) |
| ZRP | Zeitschrift für Rechtspolitik (<i>Journal for Legal Policy</i>) |



Der Text dieses Werkes ist lizenziert unter den Bedingungen von „Creative Commons Namensnennung-Weitergabe unter gleichen Bedingungen 4.0 international“, CC BY-SA 4.0 (abrufbar unter: <https://creativecommons.org/licenses/by-sa/4.0/legalcode.de>)