

Széchenyi István University
Doctoral School of Law and Political Sciences

DR. MARIANNA CSILLA NOVÁK, NÉE DR. IDZIG

***THE STATUS CHANGES OF THE EXPERT
IN THE DOMESTIC CRIMINAL PROCEEDINGS –
IN PARTICULAR, THE RULES REGARDING THE EXCLUSION***

THE THESES OF THE DOCTORAL DISSERTATION

Thematic leader:
Professor Dr. Gábor Kovács, Dr. jur., Dr. med., head of department
Széchenyi István University
2018

Table of contents

- I. The justification of the choice of topic, the subject of the dissertation
- II. The methodology of the research
- III. The summary of research results, de lege ferenda proposals
 - III. 1. The summary of research results
 - III. 2. De lege ferenda proposals
 - III. 2.1. Suggestions in respect of expert exclusion
 - III. 2. 2. Other proposals
- IV. The author's relevant list of publications

I. The justification of the choice of topic, the subject of the dissertation

*"There is no person, who would be more knowledgeable in all sciences, professions; and this shall we not expect from the judge either. His profession is to judge as per the laws; his duty, therefore, is to ken these. And what is out of his own scope, out of the science of laws, is known and should be known by others, that is: when such questions arise, he shall use the help of these arts' kenners."*¹

"The experts are participants of the jurisdiction since ancient times. This is made natural by the frequency of cases, regarding which the knowledge of a person or persons, who is/are responsible for making decision, is not sufficient to judge."²

With the thoughts of Árpád Erdei, it can be stated that the knowledge of the judge, the prosecutor and the investigator is finite, and our criminal judicial procedure codes and criminal procedure laws - along with the principle that everyone should be dealing with what they understand - do not even allow for the conductor of the procedure to perform the expertise at the same time.

The expert's position and role in criminal judicial procedure code, in the criminal procedure, was basically clarified by the law of CJPC of 1896 and the legislative proposal behind it, but at present we can witness the continuously re-evaluating role of the expert³, which is why it is worth reviewing and examining, during the past centuries what and how has changed in the expert's procedural position.

According to the introduction of the Expert Law⁴, a development process has taken place in science and technology, "As a result, the number of areas requiring special expertise has increased (...) It has become a typical, that the legal problems intertwined with issues of other professions and therefore these became difficult to judge", thus the need to involve an expert and utilize his expertise has increased - which is hardly objectionable.

In my dissertation, through historical examples, I will try to present changes of the role of the expert, the continental division of the witness' and expert's position, and how the expectations of the expert's procedure have been shaped in Hungary. Today - as stated in the expert law already mentioned - the decisive emphasis is on the quality assurance of the expert's activities, the accreditation of expert laboratories and examination methods, the verifiability of expert's work and through this, on the responsibility of the expert.

The dissertation examines the basic elements of the expert's issues, relying on the domestic regulations-based experience of criminal judge, expressly examining the relations of the Hungarian criminal judicial procedure code and criminal procedure, with the aim of exploring the problems encountered in domestic case law, recording the possible uncertainties, outlining the possible alternatives and adequately answering the emerging questions. (I note that this happens also when performing the case tasks, the obligation to avoid *denegatio iustiae* predestines the judge for this, the accuser's accusation must be judged.)

The basic aim of the dissertation - which is also viewing the historical background of the expertise, as referred to the above mentioned basis - is to analyse the legal development of the expert regarding its status issues in the Hungarian criminal proceedings.

¹ Ignác FRANK: The law of public justice in Hungary, in Buda, with the characters of the Hungarian Royal University, 1846, Part Two, Piece I. page 190.

² Árpád ERDEI: Fact and law in the expert opinion, Közgazdasági és Jogi Könyvkiadó, Budapest 1987, page 9.

³ Gábor KOVÁCS: Judicial experts' re-evaluating role in the criminal procedure. In: Mihály Bihari, András Patyi (ed.) Festive volume in honour of Gyula Szalay, for his 65th birthday. Győr, Universitas-Győr, 2010. p. 310.

⁴ Act XXIX of 2016 on Judicial Experts (hereinafter referred to as "Professional Law") - preamble

The regulation and practice, concerning the subject of the disquisition, prove to be extremely heterogeneous even in the continental system, and the basics of the Anglo-Saxon proof theory differ to such an extent, that the comparison is not possible in the present dissertation.

Due to the above - and with regard to the limitations of the content - demonstrating comparisons with the international law, or with the laws of some specific countries cannot be a realistic aim, so the dissertation contains, to the necessary extent, foreign references - primarily where it can truly and verifiably be seen, regarding the domestic law theory and/or the law itself

The research, giving the base for the dissertation, emphatically focuses on the issues of exclusion of the expert, given that it is not at all neutral whether or not the expert can take part in the process, or if he can remain in it - and this is in the closest relation positively with the assignment of the expert and negatively with the ignorance of the expertise. So what I want to talk about, what is in the center and what it related to, so certain issues - which individually may not at all be insignificant - are necessarily marginalized.

II. The methodology of the research

Disquisition - in accordance with the previously stated purpose - exploration and answering. In the line of the exploration, I first inserted the introduction of the expert pre-exemplars, within this frame I found János Székely as the author who gave an outstanding overview about the foreign antecedents. Based on his work can be recorded, for example, that the expert-witness (the expert) recognizes the fact, or from a fact he recognized or from an otherwise found fact, the expert-witness concludes an opinion.⁵

In fact, this summation concludes the - let's say - shortly formulated, eternal essence of expertise. From the Hungarian antecedents, I highlight the criminal-law proposals of 1843⁶, because I find them, as I shall say later, "astonishingly almost perfect," for formulating the rules regarding the experts, which I find as necessary to be taken into consideration, as the justification of the legislative proposal of 1896, Budapest - which I read with great respect.⁷

Another feature of the method used is that, I have tried to show the products of domestic legislation as accurately as possible in order to gain a credible picture of previous solutions, to understand what has changed and how, and for this I essentially relied on what is stated in the justifications of the legislative proposals, since on the basis of that deemed I understandable, what they wanted to regulate and why - one way, or another. Undoubtedly, the actual text of the law needs/may need interpretation, but the lawyer can also be greatly assisted in the proper interpretation by a thorough, comprehensive regulation that covers the previous regulation, and also properly justifies the relations of the change of the legislative proposal.

The substantive provisions in the CJPC of 1896 and the CPC of 1998 are examined in regards of the specific issues, for the sake of transparency. During my work, I took into account all that has certainly influenced/influences the law enforcement, so I studied the contents in the commentaries, in the university textbooks, in other legal literature, and in the instruments for the management of case law - such as in previous Ministry of Justice studies, in college opinions, in the Curia's jurisprudence analysis team's summarizing opinions, in reported cases, or in self-collected, typically higher court decisions. During my own research has it become clear that the case law, for example, has contradictions regarding the usability of polygraph examinations, or the exclusion of the expert.

⁵ János SZÉKELY: Experts in the jurisdiction, Közgazdasági és Jogi Könyvkiadó, Budapest 1967.

⁶ Criminal law proposals of 1843 (ed. László Fayer), published by book publishing of The Hungarian Academy of Sciences, Budapest, 1898, *Athenaeum* vol I.

⁷ Law article XXXIII. of 1896 on accusation judicial procedure code (hereinafter: CJPC of 1896) Justification in.: *Corpus Juris Hugarici*, justification of law article (1869-1948).

The further question of the methodology is when and to what extent is it correct to use the excellence of legal literature, in which case I preferred the reasonable moderation. So, when a previously - maybe even several decades before - raised question has been answered, with focusing on the quality, the reference is limited to this scope.

The dissertation relies heavily on the intellectuality and thinking of Tibor Király and Árpád Erdei, as well as on the views of the latter author of a legal expert.

I tried to process the regulations regarding the experts in the domestic criminal procedure, and in addition to the substantive law, the results of the relevant researches mainly with a deductive test method, along with emphasizing that the basis of my investigation was the most comprehensive overview of the domestic regulation.

III. The summary of research results, de lege ferenda proposals

In my dissertation, I examined the role of the expert in the domestic criminal procedure law and, based on this examination, I can hardly reach any other conclusions, than the fact that the most important point in this regard is the independence, the impartiality and the absolute neutrality of the expert.

In the following I try to summarize the essence of my research in this regard, and here I formulate my de lege ferenda-nature suggestions, that are closely related to this subject.

III. 1. The summary of research results

1. The juridical independence - in relation to the judging activity - includes being subject to the law (the acts and other provisions), the freedom to decide in regards with his conviction, the intractable decision process, and within that, undisturbed state along with a state of not being instructed.

This – mutatis mutandis – needs to be true to the independence of the expert as well. The expert "is subject to the obligation of the most comprehensive objectivity and impartiality" (l'objectivité et l'impartialité les plus totales – R. Garraud⁸).

The expert acts in the interest of the public and thus performs a public task but does not exercise public authority; the essence of his independence - in accordance with the provisions regarding the judges in the act on judges - is manifested in the binding provision of the act on judicial experts, according to which the expert cannot be instructed in regards with his expertise,⁹ and even in the case of a private expert, it is a specified requirement for the private expert to act impartially regardless of the interests of the persons concerned.¹⁰

Regarding independence, the rule generally applicable to experts is, of course, true and relevant to the private expert - and of course it is the same the other way around.

⁸ R. GARRAUD: *Traité théorique et partique s'instruction criminelle et de procédure pénale*, Recueil Sirey Paris 1907, Tome I. chap. III. de l'expertise pp. 590-666. In: Dr. János Székely: *Experts in the jurisdiction*.

⁹ Prof.law 47. § (1) par.

¹⁰ Prof.law 52. § (5) The principal shall not instruct the expert, regarding the content of the private expert's expertise - opposingly the relevant regulations of the Civil Code regarding the power of attorney. When preparing the private expert's opinion, the expert is obliged to act impartially, complying with the directive regulations related to his activities, regardless of the interests of the persons affected by his activities - especially that of his principal. The expert's expertise must be formulated with an objective evaluation of the facts revealed. (6) The expert shall refuse a commission that opposes the laws.

2. "The term <guise of impartiality>; (...) carries a somewhat pejorative meaning (...), only the context can reveal if it means <apparent impartiality>:"¹¹

Thinking the thought of Árpád Erdei further: the "guise of impartiality" can be interpreted as an imitation of impartiality, but the "presentation of impartiality" expresses very carefully and accurately that the obligation of impartiality is not apparent, but is indeed impartial (i.e. unbiased), so that fact needs to be presented (to be made visible) that he does not lack his impartiality.

3. The requirement of neutrality of the expert can be interpreted as the independence of the expert, it conveys that the expert cannot depend on any party of the proceeding and is not subordinate to the seconder/principal.

The expert's opinion becomes a valuable means of proof precisely due to the expert's neutrality, the independence is the prerequisite of the expert's credibility.

4. The term "fair" as in the broader sense, and "fairness" as in the narrower sense, within the term of fair procedure,¹² the independence and impartiality is part of the fair proceeding.

5. The standing point of Árpád Erdei is still directive, according to which "the institution of exclusion serves the impartial and predilection-free performance of cases, the exclusion ensures it (...) If the *objectivity* of the members of the authority is lacking, the fairness of the proceedings may be at most illusory".¹³ And the direction of Tibor Király is unchanged, which points out that the intent of the law - and this emerges from the rules of the exclusion - is the expert to be *independent* and *impartial* in his opinion.¹⁴

6. According to the CJPC of 1896¹⁵, the experts cannot be used along with the burden of the lack of a finding and an opinion, but the justification of the proposal indicated with "exclusionary reasons" when the expert could not act. According to the latter, "When determining these exclusion reasons, the only directive criterion was that only unbiased individuals could be employed as experts".¹⁶

The definition of the consequence of exclusion as "along with the burden of the absence of a finding and an opinion" is relevant because obviously there is a difference between reasonableness and expediency. According to the former, the fate of the excluded expert is shared by the excluded expertise of the expert as omitted evidence instrument, while the expediency should appear in the normative text - referring to the fact that the excluded expertise of the expert does not have an "independent fate".

¹¹ Árpád ERDEI: Doctrines and false doctrines in the science of criminal procedural law, ELTE Eötvös kiadó, Budapest 2011, 327. footnote.

¹² Károly BÁRD: Human rights and criminal jurisdiction in Europe, Fair proceeding in criminal procedures - human rights and dogmatic dissertation, Magyar Hivatalos Közlönykiadó, Budapest 2007, pp. 60-61. footnote 80.

¹³ Árpád ERDEI i. m., the author's 326th footnote: "Just for reminding: the Convention does not only conclude the principle of fair trial, but also that of the fair procedure."

¹⁴ Tibor KIRÁLY: Criminal Procedure Law, Osiris Kiadó (Edition 3), 2003, p. 261., [368] fore-edge no.

¹⁵ CJPC of 1896. 229. §

¹⁶ Justification of CJPC 1896, Corpus Juris Hugarici, justification of law articles.

7. The justification of the Procedural Act of 1998¹⁷ - further validly - states that one of the safeguards of the impartial and unbiased operation of the expert is provided by the provisions regarding the exclusion of the expert, but the provisions on exclusion determine the <contrariety>; of certain procedural positions in the criminal proceedings as well."¹⁸

Objectivity is then replaced by the goal of unpretentiousness (impartiality). As confirmed by the commentary mostly directed at orienting the judicial practice, the objective is to have unbiased experts (...) to give an opinion without bias.

8. The reasons for exclusion defined in the¹⁹ a)-g) points of the²⁰ relevant provisions of CPC are the so-called absolute, while those defined in point h) mean the so-called relative category. The previous reasons manifest an interest status as an irrefutable presumption, while in the case of the so-called relative reason, beyond the reference to it, it should be explored and assessed at the level of probability for aptitude.

The standing point of Tibor Király, which is still valid, classifies the exclusionary reasons - without first referring to their absolute-relative division - into two groups, emphasizing that the expert cannot play any other role in the criminal proceedings.²¹

Which, of course, is also the same as reverse: no other party of the procedure can perform expert tasks.

9. The position of "no unbiased expert opinion can be expected" is mostly such a circumstance, in which - exactly in order to maintain the trust in the expert and the expertise - the lack of direct bias must give ground before the requirement of the impartiality to be represented.

With regard to the bias of "other reason", I consider it reasonable to state that one cannot act as an expert, from whom no unbiased expertise can be expected - in particular, due to any furtherance of criminal proceedings, due to prior notification of responsibility of criminal law in nature or in any other legal nature, due to emotional or any other similar relationship, connection, interest, dependency.

10. The criterion of "*The Expert cannot have any other role in the criminal proceedings*" should be considered as justified to be included in the Criminal Procedure Code.

11. It is a mutatis mutandis guarantee rule that the exclusion of one of the experts in the joint expertise, the report becomes unviable as a whole, given that the two experts' joint expertise is one and indivisible, which cannot be artificially separated.

12. In the Criminal Procedure Act, it is necessary to specify which participant of the procedure may initiate the exclusion of the expert from the procedure.

If it is acceptable that the information regarding the secondment of the expert may be related to the issue of the initiation of the exclusion of the expert, then the accused party, the defendant, the injured party - and, as such, the private party, the private accuser, the substitute private accuser - and

¹⁷ Act XIX of 1998 on criminal procedure (hereinafter referred to as CPC of 1998).

¹⁸ Justification of CPC of 1998.

¹⁹ Act XC of 2017 on criminal procedure (hereinafter referred to as CPC).

²⁰ CPC 191. § (1) par.

²¹ Tibor KIRÁLY i.m.: p. 261. fore-edge no. [368]

the prosecutor are definitely liable to initiate the exclusion of the expert.

Beyond the above - within the scope affecting him - I think it is worth considering to involve other stakeholders in this circle, as well.

13. Regarding the exclusion of the expert, that authority is deciding before which the specific proceeding is in progress²², as per the CPC of 1998, while according to the new CPC, the proceeding authority decides regarding this.²³

The term "decides" necessarily means the resolution/decision making act of the person liable for it - similarly to the "exclusion decision" formula for the judge,²⁴ the prosecutor,²⁵ member of the investigating authority²⁶ and the defense²⁷ as well.

In the cases cited above, there is no dispute about if the decision to exclude requires the form of a resolution, and if with such a logic, a resolution is to be made regarding the exclusion of the expert, then appeal shall be available against it - since the CPC does not contain a provision cancelling an appeal against the resolution of excluding the expert, with regard to CPC 3. § (3).²⁸

14. In the case-law, the High Courts of Justice, within the frame of reviewing the case-decisive resolution, when detecting a reason for exclusion, they are not typically deciding on the exclusion, but along with identifying the exclusion and the uselessness of the expertise as evidence instrument, they decide on seconding another expert(s), and - if they deem dispensable - they ignore identifying the expertise as evidence instrument.

Handling the reason for exclusion as a reason for uselessness is a matter of solicitude, given that, in the event of exclusion, identifying the uselessness of the expertise of the affected expert is not sufficient. In such cases, the uselessness depends on the exclusion of the expert, so the exclusion of the expert cannot be ignored. There is no doubt that in this case the usefulness of the expertise is lost, so if the expertise is not indispensable, it is necessary to decide on the acquisition of a new expertise.

Regarding the exclusion, in the absence of a decision made with such resolution that is opposable with a formal, appeal right, the chance of correctional overriding before res judicata is lost, and if the overriding court (usually a second instance court) deals with the issue of exclusion by obtaining a new expertise, after the res judicata, the successful review cannot take place for that reason.

²² CPC of 1998 103. § (4) par.

²³ CPC 191. § (4) par.

²⁴ CPC of 1998 24/A. § (2) par. sentence 1., CPC 17. § (2) par.

²⁵ CPC of 1998 32. § (5) par., CPC 28. § (6) par.

²⁶ CPC of 1998 39. § (2) par., CPC 33. § (2) par.

²⁷ CPC of 1998 45. § (3) par., CPC 43. § (3) par.

²⁸ Among the most important innovations, the legislative proposal of the CPC mentions in Section IV of the general justification, that "it is not necessary to designate those principles of operation either, which are also defined in the Fundamental Law, at the same time these do not generally apply to the entire criminal procedure, or a number of exceptions are required to be ensured. Accordingly, resulting from the separation of branches of power, the law does not include judicial independence and the exclusive subjection of judges to law, social justice, social participation in judgments, equality before the law, the principle of legality of criminal proceedings, the right to a court proceeding, the principle of directness, publicity and verbalism of the trial, the right to a legal remedy and the right to information." Accordingly, the directive Fundamental Law of Hungary, Article XXVIII par. 7: Everyone has the right to seek remedies against any court, authority or other administrative decision that violates his/her rights or legitimate interests. So: the right of appeal will continue to apply as a main rule.

III. 2. De lege ferenda proposals

The adoption of the new Criminal Procedure Code (hereafter referred to as "CPC") mitigates the legislator's need for correction, but at the same time, it is a law enforcement experience that an act may be amended either between its adoption or its entry into force²⁹, so I do not feel that it is absolutely unnecessary to formulate proposals to improve the law.

Regarding the exclusion of the expert and other issues, my - partially textual - suggestions are as follows:

III. 2. 1. Suggestions in respect of expert exclusion

Regarding the partial but significant incoordination of exclusion, I see the clear need for regulations as follows:

1. The provision of the former CIJPC (Civilian Judicial Procedure Code)³⁰ stipulates that the court shall ex officio ensure, that an excluded expert does not participate in the proceedings, while according to the current CIJPC³¹ the court takes into account the reason for the exclusion of the expert - as a main rule- ex officio again. In the criminal procedure, this is closely related to the fact that the court, regarding to the proceeding performed in its presence, may ex officio decide about the exclusion of the expert - even without being bind with a motion -, but at the same time, prior to the indictment, the prosecution performing the proceeding or the investigating authority is in charge of the case, thus it is their task ex officio to take into account the reason of the exclusion.

It is not only for the sake of clarity that I propose amending the CPC 188. § with par. (4) with the following provision: **Before the indictment, it is the investigative authority and the prosecutor's office, after the indictment it is the court, that is ex officio obliged to take into account the exclusionary reason.**

2. For clarification, I propose amending CPC 191. § par. (1) sect. h), as follows: **One cannot act as an expert, from whom no unbiased expertise can be expected for "other reasons" - in particular, due to any furtherance of criminal proceedings, due to prior notification of responsibility of criminal law in nature or in any other legal nature, due to emotional or any other similar relationship, connection, interest, dependency.**³²

3. It is not regulated, so it is necessary to specify who is entitled to initiate the exclusion of an expert.

I propose amending the CPC 191. § with paragraph (4) the following provision: **The accused, the defender, the the injured party, the interested party and other interested parties should initiate the exclusion of the expert before the indictment, after the indictment it should be the prosecution to initiate.**

(Renumber of 191§ is justified, the current paragraph (4) shall be amended mutatis mutandis.)

²⁹ I refer to CPC of 1998. and its two amendment of novellar level.

³⁰ Act III of 1952. 178. § (3) par. sentence 1.

³¹ Act CXXX 2016. 301. § (3) par.

³² This could replace the so-called "bias of other reason" normative text.

4. On the subject of exclusion, the person liable for exclusion shall make a decision with caution - de lege ferenda the court alone -, as the expertise issued by the excluded expert shares the fate of the exclusion of the expert, later it loses its quality as evidence instrument.

The decision is subjectively made difficult, if regarding the subject of the exclusion, de lege lata the person liable for decision was the person who seconded the expert, that is, the criminal proceedings are still in progress before it, since the seconder person, with the assignment, gives advanced trust to the expert. In such cases, the decision requires the provision of overriding even more, than that of the option of correction.

The term "exclusion of experts" is unfortunate, because it implies a kind of decision, even though it may be excluding the expert or refusing the exclusion of the expert. This is correctly formulated, but only in the case of the exclusion of the judge, and it is also justified that the decision should be priority.³³

Instead of CPC 191. § current par. (4) I propose the inauguration of the provision: **On the exclusion of the expert, the court decides ex officio, or decides on the basis of an initiation - as priority.** (Renumber of 191§ is justified, the current paragraph (4) shall be amended mutatis mutandis.)

5. In the course of the preparation of the accusation, the investigating judge who is not involved in the outcome of the proceedings is merely "interfering" with the investigation process, while the exclusion of an expert is such an important issue, that regarding the relevant decision - following the pattern³⁴ of the exclusion of the expert - it is necessary to specify the scope of decisions of the investigating judge. This is also important because its decision in itself "raises" the chance of objectivity of external correction.

In the exclusionary case before the indictment, on the one hand, the court must decide on the initiative of the prosecution, and on the other hand shall decide as priority, but it is justified to use the wording "in the subject of exclusion" instead of "exclusion".

Thus I propose amending CPC 464. § paragraph (2) as the following: **In the subject of exclusion of the defense and the expert, the court decides on the initiation of the prosecution before the indictment as priority.**

6. It must be recorded, that a special remedy can be made against the decision on the subject of the exclusion of the expert. The person initiating the exclusion, the expert, the accused, the defendant, and - if he has not initiated the exclusion - the prosecutor are entitled to appeal.

I propose amending the CPC 191. § with paragraph (7) the following provision: **An appeal can be made against the decision made on the subject of the exclusion of the expert.**

(Renumber of 191. § is justified, the current numbering is amended accordingly as described in sections 2 and 3.)

7. Though the thesis of "if there is no expert, there is no expertise" seems applicable, I consider it appropriate to substantively formulate this.

I propose inserting to the CPC 191. the following, as paragraph (8): **If the court has excluded the expert from the case by a final resolution, his expertise cannot be used as evidence.**

³³ CPC 17. § (1) par.

³⁴ CPC 43. § (3) par., 464. § (2) par., section a).

It may not seem to be specifically normative to record, but rather as an interpretative suggestion that "The expert cannot play any other role in the case". This provision would cover the exclusionary reasons regarding the expert - with the exception of the so-called bias of other reasons -, and it would make solvable the possible deficiency issues of the regulations.

III. 2. 2. Other proposals

1. On the basis of the rules regarding the use of expert,³⁵³⁶ a court expert shall be amended as an expert, in its absence a sectoral expert or other ad hoc expert shall be amended.³⁷ This does not require a normative wording, the sectoral expert - having regard to the Prof. law and CPC 188. § par. (2) referring to it - is obviously the ad hoc expert, and besides the Prof. law also clearly sets out the exceptional cases of the secondment of the ad hoc expert, which differ from the main rule.³⁸

It would be important to record that in the case of a derogation from the abovementioned order of secondment, the expertise cannot be used as an evidence instrument. This is in fact a call for the case law: if there is a sectoral expert to answer the given question, yet another ad hoc expert is assigned, then at least a reason must be given for it. If a - sectoral or other - ad hoc expert is seconded in such way, that there is a court expert present who has the right to answer a given question, then there shall be a sanction for this, as it is completely inadmissible to arbitrarily ignore the use of a court expert.

Therefore, I suggest amending the CPC 188. § with inserting paragraph (3): ***If an ad hoc expert is seconded in spite of the act on court experts, his expertise may not be used.*** (The number of 188. § current paragraph (3) shall be amended as (4).)

2. As per the provision of CPC, it is clear that if a special expertise is needed on a matter, then an expert should - further on - be used,³⁹ and an expert cannot be the performer of the proceeding; but knowing the case law, there are cases where, in the absence of a negative rule, the use of expert is ignored.

As it merely seems to be out of sheer caution, I propose to amend CPC 188. § paragraph (1) to be completed with: ***An expert should be used even in the case, when the judge, the prosecutor or the member of the investigating authority himself has a special expertness.***⁴⁰

3. Provisions regarding the content of the expertise are only included in Prof. law 47. § par. (4) section a) - g), the CPC - as the current CIJPC - does not impose such an obligation.

There was a time when the legislature considered this differently, since the CJPC of 1896 clearly stated that the expert was obliged to give reasons for his expertise.⁴¹

³⁵ Prof. law 4. §

³⁶ CPC 188. § (2) par.

³⁷ Secondment order

³⁸ Prof. law 4. § (4) par. a)-c) sections

³⁹ CPC 188. § (1) par.

⁴⁰ This should also apply to the interpreter and the translator as well

⁴¹ CJPC of 1896. 236. § par. 6.

The provision of CPC is accurate; I deem appropriate to complete Prof. law 47. § paragraph (4) section d) as: ***the expertise shall include the opinion of the expert, and its justification as well.*** Thus, the relevant provision of CPC - according to which, if the expertise cannot be accepted without calm due to a deficiency, so in particular, if a) does not include the statutory constituent elements as required in the act on expertise⁴² - is not required to be changed.

4. And as a bonus: *"In the justification of the final decision of the case, it is not required to introduce the testimonies of the witnesses, the findings and opinions of the experts, nor the content of the documents used as evidence. The fact regarding which evidence were used by the court for making the decision, it is usually sufficient to refer to the names of the witnesses or experts or to refer to the documents.*

*However, if the matter of fact is complicated, the reasons must be explained in detail, why the court considers the matter of fact to be proved."*⁴³

The above citation, which could be fitting as proposal, is not a recent one, as this is the literal repetition of a legislation which is quite exactly 88 years old, more accurately that of the criminal justice system, an earlier Hungarian act for simplifying the judgment.

Since the reference to the "short" justification, in the section⁴⁴ - of the CPC entering into force - including the "accessories" for the justification of the final decision, cannot in itself replace this, and it is fearful that some of the superior courts will continue to demand editing verdicts of descriptive nature, I definitely deem it worth considering to complete the CPC 561. § par. (3) section d) with the essential part the above provision.

IV. List of the author's relevant publications

1. The private expert opinion and its evaluation in the light of the changing procedural regulations

In: Dr. Zoltán Varga festive volume - published: June 2018

2. The shaping of the criminal proceeding situation of the expert - historical antecedent

In: LAW-STATE-POLITICS, LAW- AND POLITICAL SCIENCE JOURNAL issue 01.2017 pp. 145-160.

⁴² CPC 197. § par. (1) section a).

⁴³ Law article XXXIV of 1930, 112. §.

⁴⁴ CPC 561. § par. (3) section d): The justification of the final decision contains the indication of the evidence, based on which the court made its decision, and a brief justification about what evidence the court used for deciding on the matter of fact and why or why not were those accepted.

3. One expert, more experts - the regulatory dilemmas of the past, the present and the future
PROSECUTOR'S REVIEW, 2017./02 pp. 26-43.

4. The rules of procedure for cases of special importance – in the aspect of the criminal court
In: GLOSSA IURIDICA LEGAL PROFESSIONAL JOURNAL, 2012./03 pp. 25-28.

5. State and law in the criminal proceedings – i.e. the administrative elements of CPC

In: The fundamental values of the state and law in a changing world, ed.: Imre Verebélyi, conference of Széchenyi István University, Doctoral School of Law- and Political Sciences 2012.,146-162.

6. The enforcement power of the state (rule of law) - system, restrictions, guarantees

In: LAW-STATE-POLITICS, LAW- AND POLITICAL SCIENCE JOURNAL ed.: Péter Smuk, 2009. 3. 106-113.