

DISCUSSION

EXPERT REPORT

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Abstract: *This article deals with activities carried out by experts in general. We study the structure of an expert report based on deductive reasoning. Using their professional knowledge experts deduce from known premises (evidence) conclusions as answers to certain questions. Basic attributes of expert reports include truthfulness (correctness) and verifiability.*

Keywords: *opinion, expert report, structure of an expert report, attributes of an expert report, deductive reasoning*

EXPERT ACTIVITY

Expert activity is a process **tool to ascertain facts from the past**. Expert report, as a result of the work of an expert, is procedural evidence. In an expert report an expert answers a factual question using his professional knowledge, experience and scientific and artistic knowledge.

When establishing the facts of the case the court cooperates with other persons taking part in the procedure in order to clarify the facts. An expert is one of these persons. Jurisprudence defines an expert as a person who uses his professional knowledge and skills to assess facts defined by the court and via the expert report communicates a subjective result of this evaluation (33 Odo 324/2005-254). **An expert communicates his own subjective opinion in a specific matter using judgment.**

Expert report is currently considered to be a separate form of evidence. The principle of free evaluation of evidence implies that the judge evaluates an expert report freely as any other piece of evidence.

In practice, some judges tried to develop the concept of an expert as a scientific judge (*iudex facti*). **According to this approach, judge is not able to evaluate an expert report and therefore fully depends on the expert.** In this scenario, expert would participate in court's decision. The notion of a scientific judge is related to the assessment of the contents of an expert report. It was based on the idea (case R1/1981, p. 24–25) that *“Court cannot assess the correctness of professional conclusions of an expert, because judges either have no professional knowledge or not enough to be able to safely make such an assessment.”*¹

The Constitutional Court of the Czech Republic has rejected these rulings and introduced the requirement that expert conclusions are to be evaluated by the judge.

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¹ Citováno dle ŠKÁROVÁ, M. a kol. *Občanský soudní řád s vysvětlivkami a judikaturou*. 4. vydání, 2009, s. 316.

EXAMPLE

I. CC 49/06 – “**Disregarding the factual correctness of an expert report**, blindly following expert’s conclusions **would mean** in the end a negation **of the principle of free evaluation of evidence by the court** following judge’s own inner conviction, and conversely, it would **privilege expert report as evidence** and transfer the responsibility for factual correctness of judicial decision-making to the expert; such approach cannot be accepted from constitutional point of view.” In this and other cases the constitutional court rejected the notion of scientific judge.

An expert is a person with no interest on the court decision (unbiased). This person uses specific knowledge to answer the questions (is knowledgeable).

“Expert activities must meet three attributes:

- Deals with factual matters, not legal,
- Deals with professional questions; an expert is knowledgeable in the given subject-matter, which is not generally known,
- The result is a subjective opinion of the expert that is reviewed during the proceedings (assessment of the contents of the expert report).”²

STRUCTURE OF AN EXPERT REPORT

An expert report is based on formally logical proof. From the documentation, input information and own professional knowledge an expert reaches conclusions.

An expert report follows the following process:

- An expert question is formulated,
- an argument or arguments are formulated (obvious and proven statements in the form of input information for the expert report; initial documents provided by the requesting party) that can be used to
- answer the question (logical assessment to see that the answer follows from the arguments).

Arguments the expert uses when creating an expert report (assumptions in the expert report, input information and documents) must be true and complete:

- untrue arguments (input documents and information for the expert report) cannot lead to correct conclusion,
- incomplete input information cannot lead to a certain conclusion,
- using incorrect method does not lead to the correct result,
- incorrect procedure within a correct method does not lead to the correct conclusion (a conclusion is true if it follows logically from arguments).

An expert proof (expert report) is always a derived proof because to elaborate it the expert needs input information (arguments) that could be a direct or deduced proof. Arguments used as input information for an expert report determine the quality of a conclusion of an expert report. **Generally, a conclusion of an expert report cannot be true if the arguments (input information) not true.** The reverse is not necessarily true. Even with true

² KRÍSTEK, L. *Znalectví*. Praha: Wolters Kluwet ČR, 2013. p. 53.

arguments an expert report can be untrue. For example, if an expert chooses a wrong procedure.

ATTRIBUTES OF AN EXPERT REPORT

Requirements for an expert report can be seen as required attributes of an expert report. A primary requirement is correctness. Correctness then implies other requirements.

Courts usually assess correctness by persuasiveness, which is not good. Rather than knowing, a judge simply believes in whoever is more convincing.

An expert presents his opinion in an expert report as subjective. If the court uses information from an expert report in a trial as an argument for decision it means objectivization of a subjective opinion. Subjective opinion of an expert thus becomes “objective” truth in the given dispute.

While the correctness of an expert report is an objective category, **persuasiveness is a subjective category**. Reviewability is a basic methodological requirement of an expert report.

If an expert report is not reviewable we cannot be certain if it meets other requirements.

Reviewability of an expert report means that the users can check the expert report, including an inspection of the input information and documents for correctness and completeness.

The first condition of reviewability of input information is an exhaustive list. An expert report should specify input information requested and received by the expert.

Usually, any problem can be solved using several methods within the given specialization. An expert should indicate which methods could be theoretically considered, which method was selected for the given problem and why the other methods were not used.

Also the procedure the expert used to reach conclusions from the premises (input information) should be reviewable. The process of deducing conclusions from arguments (input information) is called *consequential relation*. **An expert is fully responsible for correct usage of consequential relation!**

If the recipient is to be able to review an expert report, he must not only know what input documents and information were used by the expert, but these must also be at his disposal. Therefore, if such documents and information are not publicly available they must be attached to the expert report, with the exception of business secrets and other specific cases.

DEDUCTIVE REASONING AND OTHER METHODS USED IN EXPERT REPORTS

An expert report is derived evidence. As derived evidence it is based on input information, from which it derives conclusions. The method used by the expert to derive knowledge from the input information must be reviewable and it is therefore a subject to the scientific method. An expert report must be also correct (true). This is achieved by following a method that captures reality. *“A piece of knowledge gained by correct thinking matches*

the reality and is called correct (true)".³ An expert report must be also convincing, convincingly reasoned for two basic groups of recipients.

Logical methods are used by the expert in almost every expert report, even if unconsciously. Using logical methods the expert reaches conclusions which are justified and justifiable. Logical methods are interconnected and often combined in a scientific work or expert report.

Judgment is a basic method used by the expert in his expert report. An **expert** uses his knowledge, experience and **judgment to answer** the questions given. **Judgment** is the expert's activity used to **derive answers from input information**. A judgment is a process whereby new facts are derived from known facts. We are interested in deductive judgment. "*Deductive reasoning derives inferences from premises always logically and necessarily*";⁴ Deductive judgment here is the **process of deriving inferences from given premises**.

Logical structure of a proof in a deductive judgment assumes the existence of three quantities (premises, inferences and consequential relations). Consequential relations always assume correct usage of the consequential rules. Premises are statements, from which inferences are derived. Inferences are conclusions we created from premises. In the context of an expert report these are the conclusions of the report. The process used by the expert to derive conclusions from premises is called consequential rules.

Deductive reasoning uses consequential rules to derive inference from premises. Consequential rules are used in a way that preserves the validity of the consequential relation. A consequential relation is a "*statement that certain implication is logically true if all premises are true; the validity of consequential relation does not depend on whether or not the premises are indeed true; whether they are assumptions with uncertain validity or unreal (untrue) assumptions*".⁵

In order to review inferences (conclusions) reached by deductive judgment, we must know the premises, from which judgment was made. It is therefore necessary to list all premises used for the statement. Only then can we investigate in the future whether the premises were true or not and whether all premises with impact on the conclusion were used.

If some of the premises are only likely, the conclusion is also only likely. Likely premises are often used in appraisalment – the main input information is the business outlook for the company in the future years.

An expert uses also other methods. When studying and evaluating input information the expert studies their completeness and correctness. The inputs are **analyzed** based on expert's experience and knowledge. He decomposes input information and the basic facts, assesses their correctness and quality. Then he selects the individual pieces of information and inputs and marks them as necessary or unnecessary – he **reduces, abstracts**. When elaborating the descriptive part of the expert report (finding), the expert connects information he considers important (after the reduction phase), uses **synthesis** (connects parts, information) into a unit. Generally, the main method of moving from the finding in and expert report to the conclusion is deduction (derivation) using expert's judgment. Musil

³ KREJČÍ, F. *Logika*. Praha, 1921, p. 22.

⁴ WEINBERGER, O., ZICH, O. *Logika, pro právníky*. 3. vydání, Státní pedagogické nakladatelství, 1964, p. 160.

⁵ WEINBERGER, O. Logické a metodologické základy důkazu v oboru práva. *Stát a právo*. 1967, č. 13, p. 192.

points out that another possible method is **observation**: “... *the result of expert's investigation can be a mere statement of facts that does not require any logical methods, when ... facts are not deduced, facts are stated.*”⁶

CONCLUSION

The actual elaboration of an expert report is in essence an exercise in deductive reasoning and making judgments from the given premises. Through this activity expert's professional knowledge and skills become very visible. Using expert procedures and professional knowledge the expert deduces from the input information (premises) conclusions. Besides deductive reasoning the expert uses also logical operations and other judgments. Which method was selected for deduction is always important.

Judgments included by the expert in the report are subjective judgments of the expert. It is then up to the court to decide whether this subjective opinion will be objectivized and used in the decision-making. A prerequisite of objectification of an expert report is this evaluation.

⁶ MUSIL, J. *Některé otázky znaleckého dokazování v trestním řízení a teorie kriminalistické expertizy*. Praha: Univerzita Karlova, 1974, pp. 25–26.