

The role of technical expertise in judicial probation work in Romania and in the comparative law

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Abstract

Technical expertise is a research, interpretation and elucidation of situations actually using scientific data. Starting with a brief history of the sample with technical expertise, this paper details the role of information and scientific capacity of technical expert / specialist in explaining and arguing circumstances which have led to a state of affairs which belongs to civil or criminal. The author highlights the multitude of problems whose nature is beyond the concern of a science, expertise gained interdisciplinary - called complex expertise examination.

Key words: *technical expertise, research, complex expertise examination, role of technical expert.*

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1. Preliminary considerations

Starting from the Latin expression „*expertus, experior*”, technical expert by specialized knowledge comes to try to prove a fact which is in evidence in a civil or criminal settlement.

Where to clarify certain facts or circumstances of the case required the opinion of specialists, the prosecuting authority or courts at the request of the parties or ex officio, the sample has technical expertise. Romanian procedural law, both civil and criminal, has technical expertise in the "Probe and evidence". Although procedural laws of nature do not provide a hierarchy of evidence, allowing us to consider that technical expertise has a greater degree of objectivity than other evidence both that is managed by a highly professional specialist but and that their conclusions based on their scientific findings on legal provisions in this field, bringing the greatest contribution to the establishment of truth.

Technical expertise is an old tradition. In ancient times using limited: in Roman law was used at first retiring, but still no evidence of application specialists in solving legal cases. Romans used the sample with technical expertise mainly in solving problems using engineering setting boundary, mark off known as "mensores" graphological expertise and agricultural expertise. In the eighteenth century, the technical expert is increasingly used in criminal trials.

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2. The technical expertise judicial in Romania

In Romania, the technical expertise has a long tradition. In the old Romanian treated as "technical expert institution" and I refer to Ypsilanti's Code, contains provisions, on setting boundaries, or *Legiuirea Caragea* comprising notions on assessments contained in *Regulamentul organic*.

In Romania, technical expertise is regulated by the Civil Procedure Code, Criminal Procedure Code, Order no. 199/2010 of the Ministry of Justice on specializations and technical experts Ordinance no. 2/2001 updated and supplemented to date. Signing the Code of Criminal Procedure expert demonstrates the importance that their admission is granted by judicial probation activity.³

Technical expertise judicial, the research of the facts necessary to establish the truth can only be performed by certified technical experts from the Ministry of Justice, and in some cases, in the absence of experts certified in the specialty required can be requested people who have a special training in the field, certified training skills acquired from other ministries. Legislative changes initiated and supported by the Ministry of Justice have brought significant changes to streamline major act of technical expertise. Order no.199/2010 of the Ministry of Justice for approval specializations in legal technical expertise often implements new specializations frequently applied by the courts and other bodies having jurisdiction. In settling civil cases, the Code of Civil Procedure provides in art. 330, arrangement of technical expertise. In resolving technical expertise ordered by the court, in addition to technical expert appointed by it, may attend and experts chosen by the parties called expert advisers to parties. If there are differences of opinions, dissenting opinions are recorded in a legally separate report submitted technical expertise.

In solving criminal cases, the Code of Criminal Procedure provides in art. 118, procedure for technical expertise. In resolving technical expertise ordered by the court or criminal investigation body, besides technical expert appointed may attend and experts chosen by the parties, called experts recommend. If there are differences of opinions, dissenting opinions are recorded in the contents of the report or in an appendix.

Since technical expertise, experts use scientific data to prove and explain the factual circumstances, they constitute an important guarantee of objectivity probation. Opinion synthetic activity exerts a favorable influence on the judiciary, the contribution they make to deal quickly and objective causes.

In many cases, the resolution of civil cases or criminal judicial bodies face a multitude of problems whose nature is beyond the concern of a science, requiring the consultation of specialists from several areas, draw conclusions that the same expert report technique. The technical expertise takes an interdisciplinary character in literature is known as the "complex expertise".

³ Ana Maria Grămescu, A.M. Daniela Barbu. *Ghidul expertului tehnic*, AGIR Publishing House, Bucharest, 2006.

We note, that in construction, unlike other areas of technical expertise listed in nomenclature, there is a special legislative support, are regulated following offenses:

- offense of performing construction activities without complying with regulations on building strength and stability;
- further offense of construction works performed improperly;
- offense on construction authorization or intervention works on existing buildings.⁴

Important is that in most cases, in dealing complexities of nature are found interconnection statements, which are accompanied by specific offenses namely:

- specific offenses companies (fraud, unfair competition, misappropriation of funds, etc.);
- crimes against property (theft, fraudulent management, fraud, embezzlement, misappropriation, destruction, disturbance of possession, concealment, etc.)

The first category "specific offenses companies" are found in Law no. 10/1995 on quality in construction. According to art. 31 of this law, design, expertise, carrying out a construction or execution of intervention in existing buildings without construction compliance technical regulations on ensuring its strength and stability of an offense where such works would produce one or more of the following consequences: loss of life human corporale serious bodily or health of one or more persons, total or partial destruction of a building, destruction or degradation of important units or equipment, or other serious consequences.

In analyzing this issue, we find, first of all, social relationships who are initiated and developed in relation to the legal framework for quality construction and secondly the social relationships that develop in relation to the design, construction expertise and execution in conjunction with the life, integrity body, health or individual assets.

Material object is the construction, or the design expertise, and another material object is the work made.⁵

A very important aspect of the latter situation is the legal interpretation of the context, meaning that in many cases the material object can be transferred from the designer to the body issuing permits and agreements, if it has not complied with Law no. 50/1991 completed and updated daily, accompanied by particulars.

From this point of view most guilt is on the border of two laws – Law no. 10/1995 and Law no. 50/1991.

An example is the failure of a network of pillars that support an electric cable. Electrification work was done in 1962 after a project type available at that time. After about 40 years the beneficiary is to replace existing electric cable

⁴ Emilian Stancu, *Tratat de criminalistica*, Universul Juridic Publishing House, Bucharest, 2006, pp. 238-267.

⁵ Constantin Bulai, Avram Filipaş, a.o., *Drept penal român*, PRESS Publishing Hoose, Bucharest, 1997

variant in a modern, more resistant, but with much higher specific gravity. The client requires planning certificate and permit the execution of the Hall in the area where the investment runs.

The designer prepares technical project that has been verified in terms of the work of replacing the cable. The technical project is endorsed by the beneficiary and bid for execution. During the execution breaks a stanchion with one of the workers found him, causing him injury and degree of disability. In the first stage, immediately after the event, the active subject visa performer violation pulling cable technology. Instead, analyze the circumstances that led to the event in context, in conjunction with the law, led to change the active subject. Causality is different. It appears that the urbanism certificate issuing body not conditioned authorization stockade technical expertise with 40 years seniority (length of service expired) no longer ensure overall strength and stability required to support the new cable was 4 min times difficult to decommission the cable. The fact that it was ordered by the body issuing permits and agreements, technical expertise, and has violated the Order no. 1430/2007 implementing rules of the Law no. 50/1991 completed and updated, was doubled by the lack of experience of the designer who has not warned the beneficiary on this requirement. This last point leads to the conclusion that whatever was firing technology, all the cable breaks, because its capacity was inadequate.

Even if, in the Law no. 50/1991 to date, we find no material object of the crime, specifically nominated for this case this case above specified, however the offense subsists and is positioned at the issuing body under the aspect of negligence or incompetence. In this situation, if the legal subject is the social relations on the legal provisions relating to authorization of intervention works on an existing building, is the subject material breach of their application by issuing the building permit (execution of intervention works) without conditions imposed by Law no. 10/1995 on construction quality, condition of the rules for the application of Law no. 50/1991.

Passive subject in general is the state as guarantor and protector of social values and the case study introduces the topic active again - the status of the co-authors of the act - civil servants who have checked and issued and the designer / checker project not informed / warned about this danger.

Material element of the offense can not be established by the unavailability of technical expertise showing that life of the supporting pillars had expired, but that they have a much lower load capacity compared to capacity which must have changing electric cable - and in this context, recall that the electric cable weight again - twisted pair, was 4.3 times higher than the cable that was decommissioned.

Therefore, the legal framework for execution based on the authorization exists, but the authorization was issued without taking into consideration the technical condition of existing construction, scaffold poles represented by the grid.

Causation arising from the very materiality of the act, and applied technology company that works execution was not the most appropriate element becomes unimportant because the context of the production of the deed and

causality event is different. Regardless of the technology applied by firm performance, the pillars would have succumbed.

From this point of view we can say that this case study lies like many others, on the border of the offenses stipulated by Law no. 50/1991 and Law no. 10/1995, crime execution of works after opinions and inappropriate projects in the context of client also endorse the proper functioning - that's ENEL (with explicit powers to do so).

3. Conclusions. The regulatory models of the technical judicial expertise in comparative law

Interdisciplinary research case study presented consists in the knowledge of the legislative framework by the issuing body of opinions and agreement applicable to the situation, knowing the technology of the works of replacing electric cables and their characteristics, knowledge of the structural safety assessment of prestressed concrete poles - elements that support power line cables, while knowledge of operating parameters, knowing the operating conditions of these types of construction properly assessing the effects of loading with snow and frost in winter, or the effects of temperature variations in summer and precise quantification of these effects on existing construction - poles, knowledge of the legislative framework to classify the project safety requirements, but not least the responsibility of the beneficiary who is not a natural person, legal person responsible, for network operation.

In England and Wales, under the Civil Procedure Rules 1998 (CPR), an expert witness is required to be independent and address his or her expert report to the court. A witness may be jointly instructed by both sides if the parties agree to this, especially in cases where the liability is relatively small.⁶

Under the CPR, expert witnesses are usually instructed to produce a joint statement detailing points of agreement and disagreement to assist the court or tribunal. The meeting is held quite independently of instructing lawyers, and often assists in resolution of a case, especially if the experts review and modify their opinions. When this happens, substantial trial costs can be saved when the parties to a dispute agree to a settlement. In most systems, the trial (or the procedure) can be suspended in order to allow the experts to study the case and produce their results. More frequently, meetings of experts occur before trial.

Experts charge a professional fee which is paid by the party commissioning the report (both parties for joint instructions) although the report is addressed to the court. The fee must not be contingent on the outcome of the case. Expert witnesses may be subpoenaed (issued with a witness summons), although this is normally a formality to avoid court date clashes.⁷

⁶ Talve Michael, *What Is an Expert Witness?*, „The Expert Institute”, 14 January 2013;

⁷ Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia, Practice Direction, (Federal Court of Australia, 2007);

In the United States, under the Federal Rule of Evidence 702 (FRE), an expert witness must be qualified on the topic of testimony. In determining the qualifications of the expert, the FRE requires the expert have specialized education, training, or practical experience in the subject matter relating to the case. The expert's testimony must be based on facts in evidence, and should offer opinion about the causation or correlation to the evidence in drawing a conclusion.⁸

The Federal Court of Australia has issued guidelines for experts appearing in Australian courts. This covers the format of the expert's written testimony as well as their behavior in court. Similar procedures apply in non-court forums, such as the Australian Human Rights and Equal Opportunity Commission.

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