



The place of victims in "exceptional" criminal proceedings: the investigation phase

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Information sheet no. 3: **Management of expert witnesses**

The last few decades have seen the judicial systems of European countries afford more and more recognition to victims and take more account of their rights. On 14 November 2012, the Official Journal of the European Union published [Directive 2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime. In so-called "mass" criminal proceedings, respect for victims' rights becomes more complex on account of the large number of victims, the multiplication of parties involved and the complexity of the cases to be examined.

The aim of this practical information sheet, focused on the question of the management of expert witnesses in "exceptional" criminal proceedings, is to set out a number of good practices that can be implemented to ensure that victims' rights are better respected during this investigation phase.

Challenges

- To guarantee victims a trial within a reasonable timeframe in spite of the large number of expert witnesses required to provide evidence;
- To guarantee the quality and homogeneity of the expert witness reports commissioned;
- To ensure there is effective monitoring and individualised treatment of the expert witness evaluations

1. Setting the scope for expert witness evidence and recruiting the expert witnesses

Proving criminal liability may require the use of individual expert witnesses, in order to establish the direct or indirect causal link between the alleged facts and the harm observed. Certain so-called "exceptional" cases involve hundreds, even thousands of individual expert witness reports. As well as identifying the technical remit of the expert witness evaluations required, the judicial services must be in a position to be able to identify and recruit a large number of specialist professionals in the field concerned.

Challenges

- To identify the framework and role of the expert witness evaluations based on the technical aspects of the case;
- To recruit specialised expert witnesses with the right profile and in sufficient numbers.

Good practices identified

1. The remit of the expert witnesses to be recruited must be established based on a clear and detailed understanding of the scientific and technical issues involved in the case. As well as the upstream investigative work done by the judges and prosecutors in charge of the investigation, **specialised assistants** can be recruited (see box a). Their skills specific to the area concerned, their knowledge of the scientific literature or latest innovations are valuable assets and facilitate the **explanation of technical knowledge in lay terms** to the police or judicial investigators. They can be enlisted to help with the identification and recruitment of expert witnesses, the writing of letters of engagement or the terms of reference of the expert evaluation, the examination of case files or sorting through complaints filed.

(a) The specialised assistants of the Public Health divisions in France

"Public Health" divisions were set up at the Judicial Court of Paris and that of Marseilles in France in 2002.

They encompass three specialist divisions: the inter-regional public health division, the mass accidents division and the environmental division. They benefit from specific resources to carry out the investigative work and meet the technical challenges of the cases referred to them. The Parisian division thus has the help of six specialised assistants: three doctors, a pharmacist, a veterinary surgeon and a building inspector.

In accordance with the Code of Criminal Procedure (Articles 706 et seq), these professionals from the healthcare world are seconded on a full-time basis to work alongside the division's judges and prosecutors. At the interface between their own professional world and the judicial world, they participate in criminal proceedings, under the responsibility of the judiciary. They are a valuable asset, helping with the comprehension of the technical issues involved in cases, the recruitment of expert witnesses and the framing of their remit.

2. In some countries, such as Spain, expert evaluations in public health cases are carried out by forensic pathologists, who are public employees attached to the Ministry of Justice. In others, expert witnesses are recruited directly from the pool of professionals working in their field, although they may be on lists of expert witnesses published by the courts. In certain "exceptional" cases it may still be necessary to **look for expert witnesses who are not on these lists** or in the pool of professionals regularly called upon, due to the specific technical aspects of the case and/or the large number of expert witnesses to be recruited. Other cases may require a **college of expert witnesses with complementary skills**. In all cases, it is preferable that the expert witnesses recruited be **specialists in the field concerned**, in particular to avoid any risk of their being challenged by the defence lawyers, and to meet the imperative conditions on the **absence of conflicts of interest**.
3. Some cases require identifying a pool of expert witnesses who can examine **dozens, hundreds or even thousands of plaintiffs**. This task can be considerably facilitated by the intervention of specialised assistants. In these situations, the **motivation of the future professional witnesses** recruited can be an issue that needs to be anticipated, in particular by the introduction of certain special measures. If the circumstances allow it, the payment of the expert witnesses' work at a **higher rate than usual** is one thing that can be envisaged.

Good practices: FOCUS

- Work on the comprehension of the technical issues involved in the cases and on the management of expert witness evaluations facilitated by the recruitment of specialised assistants;
- Expert witnesses recruited who are specialised and comply with all the relevant professional ethical principles;
- Measures to enhance professional motivation.

2. Ensuring the correct performance of expert witness evaluations and coordinating the activities of the professionals

Once recruited, the many expert witnesses must be able to produce reports in a similar format, meeting the scientific and technical expectations of their specialist field as well as those of the judicial system.

Challenges

- To coordinate the activities of a multitude of expert witnesses sometimes spread over a huge area;
- To ensure the homogeneity of the format of the expert witness reports.

Good practices identified

4. A **letter of engagement** describing the role of the expert witness, the rules of procedure to be adhered to and the content and form of the report is sent to the expert witnesses recruited to

facilitate their task. Depending on the particular case, the letter of engagement may contain a **descriptive summary** of the characteristics of the injury or medical condition to be examined and evaluated. These documents, co-drafted where appropriate with specialised assistants, are intended to guarantee **similar conditions of evaluation by the expert witnesses** in spite of the diversity of the professionals involved and variations in their practices to guarantee the **homogeneity of the expert witness reports** that will then be submitted.

5. The appointment of a **single "pivot expert witness" for each case** (see box b) can also be a way of ensuring the **homogeneity** of multiple expert evaluations/reports and their **compliance** with the technical or scientific and judicial expectations. Relieved of all direct involvement with the victims, the pivot expert witness is specifically in charge of **centralising and analysing the expert witness reports**. They ensure that similar protocols have been followed, that the answers to the questions asked are homogeneous, that the arguments used are robust. With their **experience in expert evaluations and as an expert witness in the criminal courts**, they have the competence to classify the sequelae and severity of the medical conditions and injuries on the basis of the specialist expert witnesses' reports.

(b) The role of the pivot expert witness: the example of the Mediator case in France

The Mediator scandal erupted at the end of 2010 as a result of articles in the press. This drug, which was on the market from 1976 to 2009, was suspected at the time of causing the development of potentially lethal heart conditions.

From the judicial point of view, the case began with five complaints filed by victims at the end of 2010. The first part of the case concerning acts of deception was the quickest to investigate and culminated in a trial in 2021, which was also able to rule on certain individual injuries. The second part of the case, relating to unintentional injury and manslaughter, is still being examined, due to the very large number of individual situations that need to be assessed by the expert witnesses.

Although expert evaluations are usually carried out by forensic pathologists, here it is cardiologists who have been selected to carry out the individual expert evaluations of the plaintiffs, due to the type of medical condition to be documented in connection with the taking of the drug. This choice obliged the court to recruit doctors not on the lists of expert witnesses kept by the Courts of Appeal and the Court of Cassation, who are therefore less familiar with the workings of the judicial system.

The pivot expert witness has played an essential role in this case, in particular by providing the intermediation between specialised medical expert evaluation and judicial expectations. Himself a forensic pathologist experienced in criminal cases, he was in charge of deciding the degrees of temporary incapacity for work necessary to classify the sequelae and the decide whether criminal charges of unintentional injury and manslaughter applied.

6. The judges in charge of the investigation, as well as any specialised assistants and the pivot expert witness make themselves **available to the expert witnesses** throughout the proceedings. **Regular communication** is maintained in order to prevent any difficulties.

Good practices: FOCUS

- Preliminary documents framing the remit of the expert witnesses to facilitate their work and encourage homogeneity;
- Appointment of a single "pivot expert witness" to centralise the expert evaluations, ensure their quality and, where appropriate, attribute criminal charges;
- Continuous availability of the judicial actors for the expert witnesses.

3. Monitoring the expert witness evaluations and the provision of information to victims

The courts must introduce specific procedures to ensure the classification and legibility of the many expert witness reports so that they can be used by the justice system. The effective monitoring of the expert witness evaluations also involves imperatives regarding information and communication with the victims.

Challenges

- To set up effective systems for monitoring expert witnesses;
- To ensure individualised treatment of expert witness evaluations to meet the victim information imperatives.

Good practices identified

7. In certain cases, such as in public health cases, expert witness evaluations can occupy a central place in the **management of the provision of information to the victims** and the parties. The different parties must be informed in good time of certain aspects relating to general and individual expert witness evaluations, so that they can make their views known on the format or content of the expert witness reports. Furthermore, the receipt of an expert witness report can trigger requests for further acts (a second opinion, a request for more documents) which will take more time. Expert witness evaluations must be managed in the light of these **imperatives and circulation** of certain necessary information.
8. For greater legibility of the day-to-day management of these serial expert witness evaluations, victims' cases should preferably be **dealt with separately from the background investigations**.
9. To ensure effective and more understandable monitoring of the expert witness evaluations, the use of **online spreadsheets** (via Excel for example, or **dedicated software**) would appear to be unavoidable. This type of spreadsheet, containing the main information about the victim, makes it possible, among other things, to track the dates when expert witness reports are submitted and their status, and to monitor notifications and requests for additional documents. It gives the judges a **complete overview**, and also facilitates the work of the court clerks or administrative staff in charge of answering the **day-to-day questions of the victims** or parties. Chronological logging of complaints allows the cases to be dealt with in the order of their arrival.

10. The **rules of the codes of criminal procedure** in European States can prove to be ill-adapted to the reality of serial proceedings of this type, for example by systematically requiring that all the parties be notified of every new act or request for an act by an expert witness. The participants explained that in the meantime, **until any changes occur in the procedures**, their practices were moving away from the letter of the law while continuing to respect the rights of the defence: in order to improve efficiency, notifications were only sent to the party concerned and to the accused.
11. The management of serial expert witness evaluations requires the provision of **dedicated human resources** in sufficient numbers to provide the secretarial and logistics services needed to handle the expert witnesses (digitisation, listing, day-to-day monitoring). Apart from the issues of staffing numbers, it is also essential to ensure the **stability of the human resources** so that the judges and prosecutors can count, long term, on coherent teams with an in-depth knowledge of the case.

Good practices: FOCUS

- Management of expert witness evaluations adapted to time and circulation of information imperatives;
- Expert witness evaluations treated separately from the background investigations;
- Tracking of expert witness evaluations using online spreadsheets or dedicated software;
- Adaptation of the rules of criminal procedure to improve efficiency;
- Stable and substantial teams to support the work of the judges and prosecutors.

Useful resources:

- [European Directive 2012/29](#)



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