COURT EXPERTS

Disqualification and Recusal of Court Experts in Civil Proceedings and Their Removal from the Official Register

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Research Study

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FOREWORD

Through the work of the Judicial Base South (JBS), we sought to address issues concerning court experts. Court experts appear largely to have escaped the attention of those involved in judicial reform. Because the subject is exceptionally broad, we focused on the disqualification and recusal of experts in civil proceedings and their removal from the official register.

In shaping the research topic, we were assisted primarily by Nebojša Stanković, PhD, an attorney-at-law from Niš, who served as the lead author and research director. The other members of the research and writing team were Milan Jovanović, a judicial assistant at the Commercial Court in Niš, and Miodrag Petković and Stefan Vlatković, attorneys-at-law from Niš. All members of the research team are associates or members of JBS. Employees of the Committee for Human Rights Niš provided logistical, organizational, and administrative support to the team.

The research was conducted in 2023, and the study was completed in the first quarter of 2024. The findings and data presented in this publication reflect the situation as determined during the specified period.

Mihajlo Čolak
Judicial Base South

EXECUTIVE SUMMARY

Where court proceedings require the determination of a fact relating to a specialized field in which the judge does not possess the necessary knowledge and experience, the court will order expert evidence on a party's motion or, exceptionally, of its own motion. Court experts are persons with specialist knowledge who have no interest in the outcome of the dispute and who provide the court and the parties with an opinion on facts relevant to resolving the dispute.

This study examines the appointment and removal of court experts, including the conditions for their appointment and the grounds for their removal, particularly those relating to a lack of professional competence or conscientious performance. It also considers experts' position in civil proceedings, primarily their role as impartial specialists, and the remedies available to participants when an appointed expert is biased or lacks the requisite expertise.

To examine the position of court experts generally, and in civil proceedings in particular, the study considers the powers and practice of the Ministry of Justice, as the authority responsible for appointing and removing court experts, as well as the courts' role in cases of unprofessional conduct by experts in civil proceedings.

The data obtained through the research instruments and methods are analyzed and discussed, forming the basis for the conclusions and recommendations presented in this field.

I INTRODUCTION

Expert evidence is one of the principal and most frequently used forms of evidence in civil proceedings. It is taken where the court lacks the specialist knowledge needed to establish or clarify a specific issue of fact. Expert reports and opinions are most often required where the proceedings involve economic and financial, construction, medical, transport, graphoscopy, or other fields in which judges lack specialist knowledge.

In practice, expert evidence will be taken where it is necessary, for example, to determine the amount of a debt or calculate a claim; calculate pecuniary loss and the extent of compensation; determine the value of real property or completed works; establish injuries, pain and fear suffered by an injured party; establish whether the person responsible for damage breached traffic regulations by driving at an unsafe speed; determine whether a signature was forged; or decide on the placement of a child and contact between the child and a parent.

The taking of expert evidence and the disqualification and recusal of experts in civil proceedings are governed by Articles 259-275 of the Law on Civil Procedure (Official Gazette of the Republic of Serbia, Nos. 72/2011, 49/2013 – Constitutional Court decision, 74/2013 – Constitutional Court decision, 55/2014, 87/2018 and 18/2020).

Expert evidence is, as a rule, entrusted to one expert, although the court may appoint two or more experts where the complexity of the examination so requires. Expert evidence may be provided by a natural or legal person entered in the Register of Court Experts maintained by the Ministry of Justice. Exceptionally, where no court expert in a given field is entered in the Register, the court may appoint a person with the appropriate professional qualifications. That person must declare that the expert report and opinion will be prepared in accordance with the rules of the profession, to the best of their knowledge, objectively and impartially.

The court orders expert evidence by a separate ruling stating the subject matter of the dispute, the subject matter of the expert examination, the time limit for submitting the written expert report and opinion to the court, the personal or business name of the person entrusted with the examination, and the relevant information from the Register of Court Experts.

A written expert report must contain: reasons identifying the facts and evidence on which the findings are based, together with the expert opinion; information on where and when the examination was conducted; information on the persons who attended, and on those who did not attend despite having been duly summoned; and information on the documents enclosed. If an expert submits an unclear, incomplete or contradictory report and opinion, the court will order the expert to supplement or correct it and set a time limit for remedying the deficiencies, or summon the expert to explain at a hearing. The parties may comment on the court expert's report and opinion. They may also engage a specialist or another expert entered in the Register of Court Experts to prepare comments on the submitted report and opinion, or a new written report and opinion, which may be read at the hearing. That person may also participate in the hearing by asking questions and providing explanations.

The court will fine an expert who is a natural person between RSD 10,000 and RSD 150,000, or a legal person performing expert examinations between RSD 30,000 and RSD 1,000,000, if the expert fails to attend a hearing despite having been duly summoned and does not justify the absence, or fails to submit the report and opinion within the prescribed time limit. The court may impose the same fine if an expert refuses, without justification, to perform an expert examination. The person responsible for expert examinations in a legal entity may also be fined between RSD 10,000 and RSD 150,000. A fine imposed on a natural person is enforced under the law governing the enforcement of criminal sanctions. In contrast, a fine imposed on a legal person is enforced under the law governing the criminal liability of legal persons. At a party's request, the court may order an expert to reimburse the costs caused by an unjustified failure to attend or an unjustified refusal to perform the examination.

An expert may be disqualified or recused on the same grounds as a judge or lay judge. A person previously examined as a witness may be appointed as an expert.

An expert must be disqualified:

1) if the expert is a party, a party's statutory representative or authorized representative, or is in a relationship with a party as a co-entitled person, co-debtor or recourse debtor;

2) if the expert, as a shareholder, owns more than 3% of the shares in the total capital of a legal person, or is a member of a company or cooperative, where one of the parties is the expert's creditor or debtor;
3) if a party, or the party's statutory or authorized representative, is the expert's blood relative in the direct line or up to the fourth degree in the collateral line, or the expert's spouse or unmarried partner, or a relative by affinity up to the second degree, irrespective of whether the marriage has ended;
4) if the expert is the guardian, adoptive parent or adopted child of a party or of the party's statutory or authorized representative, or if the expert shares a household with a party or with the party's statutory or authorized representative;
5) if the expert and a party are involved in other civil proceedings against each other;
6) if, in the same case, the expert participated in mediation or in concluding a court settlement challenged in the proceedings, made the decision being challenged, or represented a party as an attorney-at-law;
7) if, as an insolvency judge or a member of an insolvency panel, the expert made a decision that gave rise to the dispute.

An expert may be recused where circumstances raise doubt about the expert's impartiality.

A party must apply for the recusal of an expert as soon as it becomes aware of a ground for recusal and, at the latest, before expert evidence begins to be taken. The application must state the circumstances on which it is based.

The court decides on applications for the disqualification and recusal of an expert. A requested court decides on recusal where it is taking the expert evidence. No appeal lies against a ruling granting an application for recusal, and no separate appeal lies against a ruling refusing it. If a party learns of a ground for disqualification or recusal after the expert examination has been completed and objects to the expert evidence on that ground, the court will proceed as if the application had been made before the examination.

The Law on Court Experts (Official Gazette of the Republic of Serbia, No. 44/2010) governs the appointment and removal of court experts.

Presidents of first-instance courts notify the ministry responsible for justice (the Ministry) when they need experts in particular fields. Where the Minister determines that there are too few experts in a given field, the Minister publishes a public call for the appointment of experts in the Official Gazette of the Republic of Serbia and on the Ministry's website.

An applicant for appointment as an expert submits an application to the Ministry, along with documents demonstrating that they meet the conditions for performing expert work.

The Minister issues the decision appointing an expert. The decision is the basis for entry in the Register of Court Experts maintained by the Ministry of Justice. The Register contains the registration number; the expert's surname, one parent's name, and given name; year of birth; place of residence; address and telephone number; professional title; field of expertise and subspeciality; and the number and date of the decision appointing or removing the expert. The Ministry maintains the Register electronically and makes it publicly accessible on its website.

The court, or other authority conducting the proceedings, monitors the expert's work and notifies the Ministry of any comments on that work and of any fines imposed. Those institutions must also monitor experts' work and, when appointing an expert in an individual case, select an expert resident within the court's territorial jurisdiction, while ensuring an even distribution of work among experts in the same field.

At least once a year, judges at first-instance courts meet to consider matters of importance to the court concerning the work of experts. Based on a conclusion adopted at such a meeting, the court president may establish a need to increase the number of experts in a particular field or submit a reasoned proposal for an expert's removal.

A reasoned proposal for the removal of an expert on account of incompetent, improper or unconscientious performance may be submitted by a court, another authority conducting proceedings, a party, or another participant in judicial or other proceedings.

An expert will be removed:

1) at the expert's own request;
2) if it is established that the conditions based on which the expert was appointed did not exist or have ceased to exist;
3) if the expert is convicted of a criminal offense that renders the expert unfit or unsuitable to perform expert duties;
4) if the expert is made subject to a protective measure prohibiting the performance of an activity in the field in which the expert provides expertise;
5) if the expert's legal capacity is withdrawn or restricted by a court decision;
6) if the expert is found, in the manner prescribed by law, to have lost capacity for work;
7) if the expert performs expert duties improperly, unconscientiously or incompetently.

An expert performs duties improperly or unconscientiously if, without justification, the expert refuses to provide expertise, fails to respond to summonses from the court or another authority conducting the proceedings, fails to complete the examination within the prescribed time limit, or in other cases provided for by law.

An expert performs duties incompetently if the expert provides incomplete, unclear, contradictory, or inaccurate findings.

In proceedings initiated by a proposal to remove an expert, the Minister may establish a three-member expert panel of leading specialists in the relevant field to assess the expert's professional competence. The Minister may also allow the expert to comment on the facts and circumstances underlying the removal proposal.

The expert is removed from the Register of Court Experts, and the decision on removal is published in the Official Gazette of the Republic of Serbia.

II DEFINITION OF THE SUBJECT OF THE RESEARCH

In general terms, the research examines the means available to parties to protect themselves against improper, incompetent, unethical, and unprofessional expert conduct.

During the proceedings, the parties may influence the choice of expert, comment on the expert report and opinion, and raise objections. These means, however, are not always sufficient to protect parties against expert conduct that is inconsistent with the law and the rules of professional practice and ethics.

To prevent or sanction such improper conduct, the parties and the court have additional remedies: an application for the expert's disqualification, an application for the expert's recusal, and an initiative or proposal to the Ministry for the expert's removal.

More specifically, the research examines how frequently and effectively these statutory remedies are used, why they are needed, and the results of their use.

III RESEARCH AIM AND TASKS

The ultimate aim is to determine how, and whether, a party dissatisfied with an expert's statement can obtain effective protection against unethical, unprofessional or malicious conduct and against an expert report and opinion of that kind, and whether experts are sanctioned for such conduct in accordance with the law.

Given the number of proceedings, experts, and fields of expertise, it would be very difficult to analyze a large number of cases. The research therefore covers a random sample of cases over a broader period, in which information about applications for the disqualification or recusal of experts is publicly available.

For information on proposals to remove experts and the decisions made in those proceedings, the period covered is January 2021 to December 2022.

Accordingly, the immediate aim is to collect specific data and information to achieve the ultimate aim and answer the questions set out above.

To achieve these aims, the research tasks are: to examine publicly available information on court cases in which applications for the disqualification or recusal of experts were made and decided; to obtain additional individual and aggregate data from the Ministry of Justice under the Law on Free Access to Information of Public Importance (Official Gazette of the Republic of Serbia, Nos. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021) relating to the subject of the research; to analyse information provided by judges dealing with civil cases on the disqualification and recusal of experts; and to analyse publicly available decisions on the removal of experts.

IV MATERIAL EXAMINED

The research covers civil cases before the Basic Courts in Niš, Vranje, Pirot and Prokuplje; the Higher Courts in Leskovac, Vranje, Niš and Prokuplje; and the Commercial Courts in Niš and Leskovac. The material was collected through interviews or questionnaires and by searching public databases.

The research also covers proceedings before the Ministry of Justice concerning the removal of experts.

V RESEARCH METHOD

The research was conducted in five phases.

In the first phase, the relevant legislation was collected and examined using analytical methods.

The second phase involved: (i) submitting requests for access to information of public importance to the Ministry of Justice to obtain information within the Ministry's competence relevant to the research for 2021 and 2022 throughout Serbia and, in particular, southern Serbia; (ii) reviewing publicly available decisions on the removal of experts; (iii) examining publicly available information and databases; and (iv) sending questionnaires to judges of basic, higher and commercial courts in southern Serbia who had decided on the disqualification and recusal of experts.

The third phase comprised analyzing the collected data, preparing statistics, and drawing conclusions.

The fourth phase assessed whether legislative amendments were needed and, where appropriate, prepared proposals to improve the situation in the field.

The fifth and final phase involved drafting, reviewing, and presenting the final report.

The researchers participated in the first phase; each subsequent phase required cooperation from the courts and administrative authorities.

The organizer and the researchers carried out the second phase jointly.

The researchers and authors carried out the third, fourth, and fifth phases.

VI RESEARCH TIMEFRAME

Phase	2023
I	May
II	June-August
III	August-September
IV	September
V	September-November

VII RESEARCH ETHICS

The research report was prepared without personal or identifying information arising from the material examined.

VIII FINDINGS AND DISCUSSION

Various instruments were used to collect relevant data on which conclusions concerning the research topic could be based. The data obtained through each instrument are presented below. The findings derived from the research material are followed by the researchers' conclusions, as well as an analysis of the legislation in force.

i) Information of Public Importance

During the second phase of the research, requests for access to information of public importance were submitted to the Ministry of Justice of the Republic of Serbia under the Law on Free Access to Information of Public Importance (Official Gazette of the Republic of Serbia, Nos. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021).

The Ministry of Justice was asked to provide the following information:

1) How many decisions removing experts did the Ministry of Justice issue between 1 January 2021 and 31 December 2022?
2) Under Article 19 of the Law on Court Experts, what were the grounds for removal in the cases referred to in point 1? The Ministry was asked to provide a breakdown of the total number of decisions by each statutory ground applied.
3) The Ministry was asked to provide copies of decisions removing experts for improper, unconscientious or incompetent performance, if any such decisions had been made during the period under review.
4) How many decisions removing experts were made in respect of experts appointed for the territorial jurisdiction of the Higher Courts in Niš, Leskovac, Vranje, Prokuplje and Pirot?
5) How many decisions on removal were challenged in administrative dispute proceedings?
6) Where such proceedings were instituted, did the Administrative Court annul any decisions and, if so, how many judgments did it deliver?

The Ministry of Justice replied that it was under no statutory obligation to maintain statistical records on the number of decisions removing experts. It did, however, maintain an internal record showing 52 (fifty-two) such decisions during the requested period. The Ministry further stated that its statistics did not classify decisions by the grounds for removal or by any of the other parameters specified in the request.

A further request for access to information of public importance asked the Ministry of Justice to provide the following information:

1) the number of notifications concerning comments on experts' work or fines imposed on them that the Ministry received between 1 January 2021 and 31 December 2022 under Article 18(1) of the Law on Court Experts, and the identity of the notifying persons or bodies; and
2) the number of reasoned proposals for the removal of experts for incompetent, improper or unconscientious performance submitted by courts, other authorities conducting proceedings, parties or other participants between 1 January 2021 and 31 December 2022 under Article 18(4) of the Law on Court Experts, including whether a court, another authority, a party or another participant submitted each proposal.

The Ministry replied that it did not maintain statistical records on the number of proposals received or on the persons or bodies submitting proposals to remove experts.

The replies to the requests for access to information of public importance indicate that, as a rule, the Ministry of Justice does not hold aggregate, analytical, synthesized, or statistical data classified by different parameters concerning the exercise of its powers in matters of expert removal. The Ministry states that it has an internal record of the number of removal decisions. It does not, however, maintain statistics by category or parameter, such as the ground for removal; the territorial jurisdiction of the court for which the expert was appointed or removed; the number of administrative disputes brought against removal decisions; the types of decisions made by the Administrative Court; or the number and authorship of proposals for removal. The Ministry notes that the

registry office of the Administration for Joint Services of the Republic Bodies registers submissions concerning the removal of experts upon receipt.

The Law on Court Experts does not require the competent ministry to maintain separate records on every matter governed by the Law. Article 16 provides that the Ministry must maintain the Register of Court Experts, which contains basic information about each expert: registration number; surname, name of one parent and given name; year of birth; place of residence; address and telephone number; professional title; field and subspeciality of expertise; and the number and date of the decision on appointment or removal. The Ministry maintains the Register electronically and makes it publicly accessible on its website. In addition to the Register, the Ministry maintains a documentary file for each expert. These files contain the documents on which registration was based, complaints made against the expert, decisions imposing fines, and proposals for removal.

This means that information on complaints against experts, fines, and proposals for removal is kept in each expert's individual file. It does not mean the information is entered in the Register, made publicly available, or used to create a single, current, and readily searchable database capable of producing statistical, synthesized, or analytical reports.

The openness and availability of information of public importance in Serbia is a frequent subject of debate. Information concerning experts is indisputably information of public importance: it concerns the justice system and may affect conclusions about how the judiciary functions. Accessibility and openness could be improved by requiring electronic records of comments received on experts' work, notifications, removal proposals, and imposed penalties. Such information could be included in the Register of Court Experts or entered through the electronic registry system by the Administration for Joint Services of the Republic Bodies. Conditions should be established for entering additional information relevant to the performance of expert duties, including the grounds for removal and penalties. This would give the public and officials easier access, electronic search functionality, and systematic or individual views comparable, for example, to the courts' automated case registration system.

In view of the initial replies, and the inability to provide specific data because the requested information was dispersed across many documents, the research team asked the Ministry of Justice to provide the following documents containing information relevant to completing the research material:

1) a copy of one decision removing an expert at the expert's own request between 1 January 2021 and 31 December 2022;
2) a copy of one decision removing an expert for improper, unconscientious or incompetent performance during the same period;
3) a copy of one decision removing an expert on any of the grounds in Article 19(1)(1)-(6) during the same period;
4) a copy of one Administrative Court judgment delivered in an administrative dispute challenging a Ministry of Justice decision removing an expert during the same period;
5) a copy of one notification concerning comments on an expert's work or a fine imposed on an expert that the Ministry received during the requested period;
6) a copy of one reasoned proposal for the removal of an expert submitted to the Ministry during the same period, together with notification of the Ministry's decision.

In response to the request for access to information, the Ministry of Justice provided the following documents:

1) a decision dated 28 January 2021;
2) a decision dated 10 October 2022;
3) an Administrative Court judgment dated 13 January 2022;
4) a notification from the First Basic Court in Belgrade dated 2 June 2022.

The participants in the research know the case reference numbers of all these documents.

In addition to the documents, the Ministry stated that it did not hold any information or document concerning the removal of an expert for improper, unconscientious, or incompetent performance. It considered item 6 of the request insufficiently specific because such proposals are submitted in free form.

The documents received are summarised below.

By the decision of 28 January 2021, N. J. B., a graduate physicist, was removed from office as a court expert in graphoscopy, with a subspeciality in examining security documents, typewritten documents, and other materials. The expert was removed for personal reasons.

By the decision of 10 October 2022, D. B., an applied geodetic engineer, was removed from office as a court expert in construction, with a subspeciality in geodesy. The expert was removed under Article 19(1)(3) of the Law on Court Experts, which provides for removal when an expert has been convicted of a criminal offense that renders the expert unfit or unsuitable to perform expert duties. The Ministry had received notification from a basic court that the expert, as the accused, had been convicted by a final judgment and fined for the criminal offense of giving false testimony under Article 335(1) of the Criminal Code (CC). The judgment established that, while acting before a higher court, the expert falsely stated that he had inspected the original of a particular document. However, he knew this was untrue because another authority's file contained only an uncertified copy, not the original. The Ministry therefore found the expert unfit to perform expert duties and removed him from office. By consulting the Register of Court Experts, the authors established that D. B. had not been deleted from the Register after the removal decision. The Minister of Justice issues a removal decision, which is final at the administrative stage. However, it may not become final and binding if the expert challenges its legality in an administrative dispute.

By a judgment of 13 January 2022, the Administrative Court upheld the claim brought by an expert from Pančevo, annulled the Ministry of Justice decision of 11 October 2018 and remitted the matter to the competent authority for reconsideration. The annulled decision had removed the claimant from office as a court expert in construction, subspecialities residential construction and hydraulic structures, under Article 19(1)(7) and Article 19(2) of the Law on Court Experts for improper and unconscientious conduct in a case. The statement of reasons indicated that the claimant had been appointed as an expert in a case before the Second Basic Court in Belgrade. The Court informed the Ministry that the expert had collected the case file but had neither returned it nor prepared a report and opinion, despite two reminders over approximately six months. The expert told the Court that he left

the file outside the defendant's house while attempting to conduct the examination, and that it was no longer there when he returned. The judge initiated proceedings to remove the expert for manifestly unconscientious and negligent conduct and for losing a file in proceedings commenced in 1999. Invited by the Ministry to respond, the expert stated that he had left the file in the defendant's yard after the defendant prevented him from conducting the examination and ordered him to leave immediately. According to the expert, those threats caused him to forget the file, which was gone when he later returned. He also stated that the examination could not be completed because the defendant repeatedly obstructed access to the relevant buildings and the judge took no legal measures, despite several notifications, to ensure the presence of officials and enable the examination.

The Administrative Court held that the respondent authority, the Ministry of Justice, had breached the rules of procedure because the reasons given in the decision were not supported by the case file submitted with its response to the claim. The Court found that the proposal to initiate removal proceedings under Article 272 of the Law on Civil Procedure had been submitted by an individual judge, rather than by the Second Basic Court in Belgrade; that no ruling imposing a fine under Articles 272 and 267 of that Law had been submitted, although such a ruling is the basis on which the competent ministry is notified with a view to initiating the expert's deletion from the Register; and that the Ministry had not examined the reconstructed file of the previously lost case, but only a report on the progress of the case from the court database. It could therefore not be established with certainty that the claimant, as a court expert, had failed to act in the manner prescribed by law, had failed to inform the court that he could not act, or had failed to seek professional assistance. The Court also noted that a court president submits a proposal for removal based on a conclusion adopted at a meeting of judges, and that the case file did not contain a ruling imposing the fine that prompted the judge to contact the Ministry about initiating removal proceedings.

The notification from the First Basic Court in Belgrade dated 2 June 2022 shows that the Court informed the Ministry that it had fined an expert and provided a copy of the ruling imposing the fine.

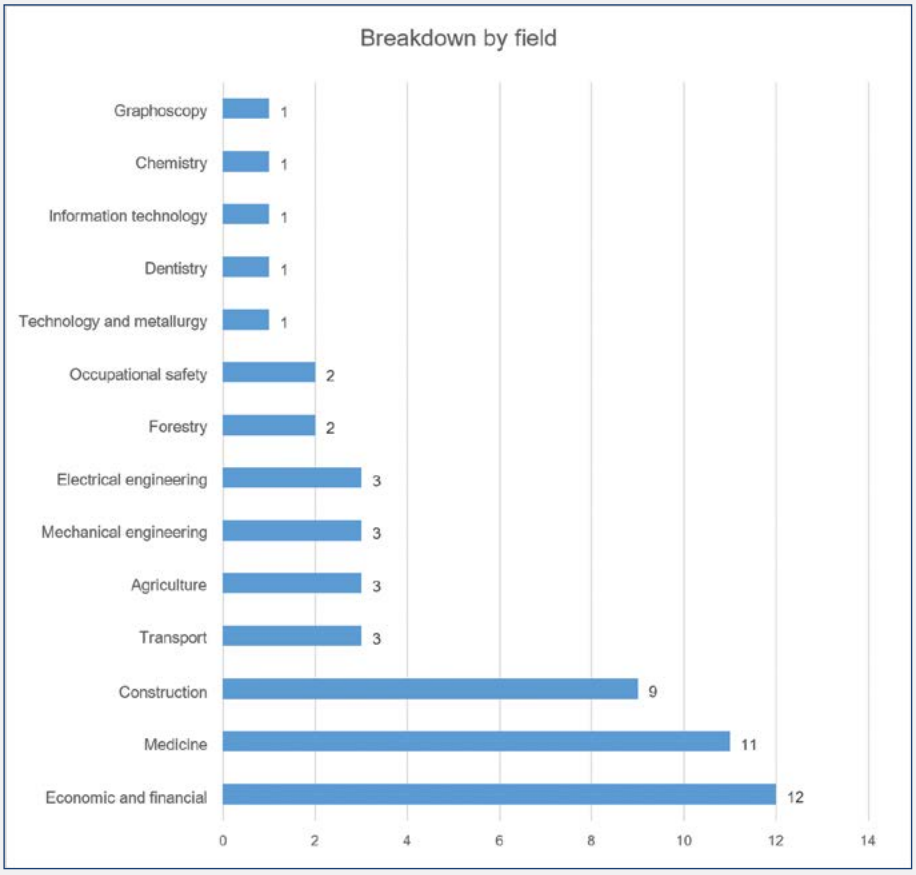
Unfortunately, the data and documents obtained constitute a minimal and random sample, insufficient for broader conclusions about the actual state of affairs in the field. The Ministry of Justice has no systematic databases from which relevant information on the professional status and work of experts can be obtained readily and conveniently for the full period examined. The requested information is dispersed across many documents and cannot be provided without additional work, for which the Ministry evidently lacks capacity.

Nevertheless, the information and documents indicate that, during the period examined, courts were active to some extent in sending notifications about unprofessional conduct by experts. This resulted in proceedings examining experts' work, some of which led to removal. However, procedural deficiencies in certain proceedings and likely challenges to Ministry decisions before the Administrative Court, where proceedings commonly last more than two years, meant that experts whose work the Ministry had reviewed and found deficient had not been finally and conclusively deleted from the Register of Court Experts.

ii) Publicly Available Information on the Removal of Experts

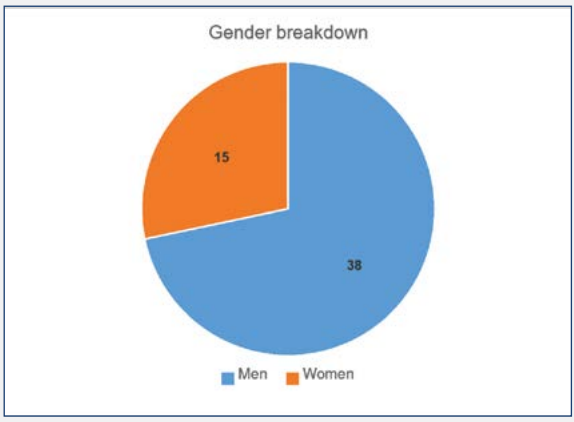
The authors analyzed information on experts removed during 2021 and 2022. Removal decisions are published in the Official Gazette of the Republic of Serbia, but not in full or in their original form: only the introductory and operative parts are published. Those parts disclose the statutory ground for removal but not the reasons underlying the individual decision. As shown below, however, this has little practical significance because removal at the expert's own request was overwhelmingly the principal ground.

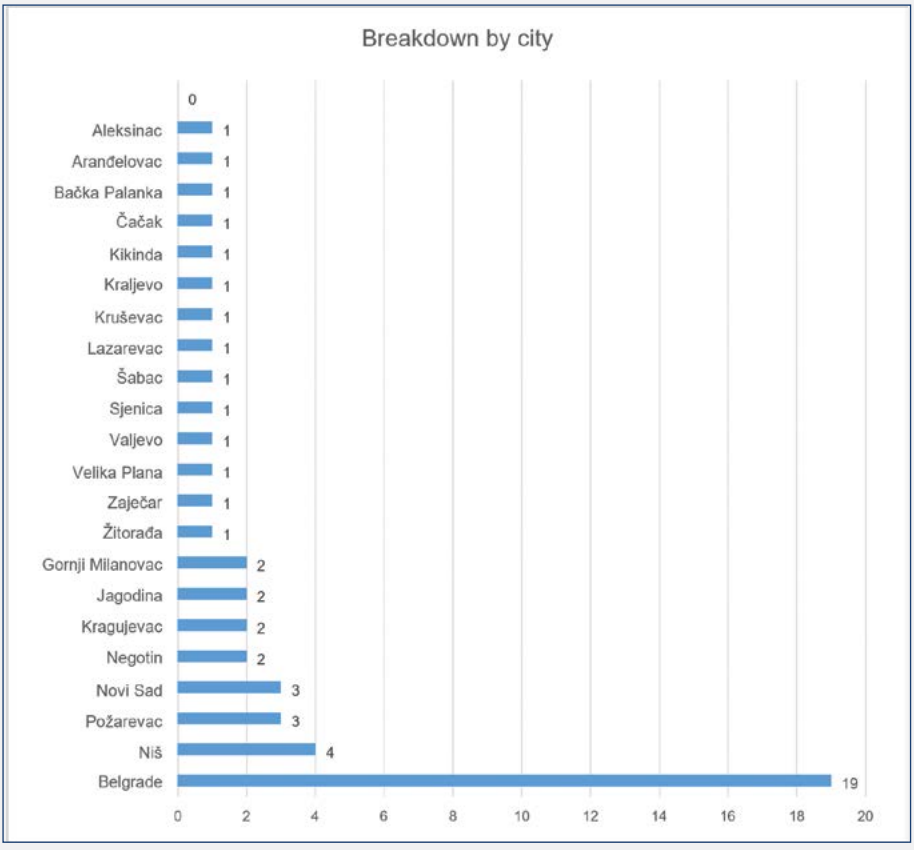
A total of 53 experts were removed in 2021 and 2022: 21 in 2021 and 32 in 2022. All but one were removed at their own request under Article 19(1)(1) of the Law on Court Experts, probably because they had reached retirement age, ceased practicing, moved away, or for similar reasons. One expert was removed under Article 19(1)(3) of the Law following a criminal offense that rendered the expert unfit to perform expert duties.



The largest group of removed experts worked in economic and financial matters, followed by medicine and construction. Together, those three fields accounted for 60% of all experts removed (32 of 53). Geographically, the largest number were from Belgrade (19), followed by Niš (4), and Novi Sad and Požarevac (3 each); no other city had more than two. By gender, 38 men (72%) and 15 women (28%) were removed.

The data show that experts were, as a rule, removed at their own request (52 of the 53 removed experts). Only one was removed after committing the criminal offense of giving false testimony under Article 335(1) of the CC, which rendered the expert unfit to perform expert duties, a ground prescribed by Article 19(1)(3) of the Law on Court Experts. Of particular importance to this research, no expert was removed under Article 19(1)(7), namely for performing expert duties improperly, unconscientiously or incompetently.





In its response of 11 July 2023 to the request for access to information of public importance, the Ministry informed the researchers that, although it acts on proposals for the removal of court experts within its competence, it does not record or compile statistics on the number of proposals received, their authors, or

the grounds for removal. In a further response of 19 July 2023, the Ministry confirmed the researchers' finding that 52 removal decisions had been made between 1 January 2021 and 31 December 2022. In its final response of 12 September 2023, it confirmed that it had no records of, and had issued no decisions removing experts for, improper, unconscientious or incompetent performance.

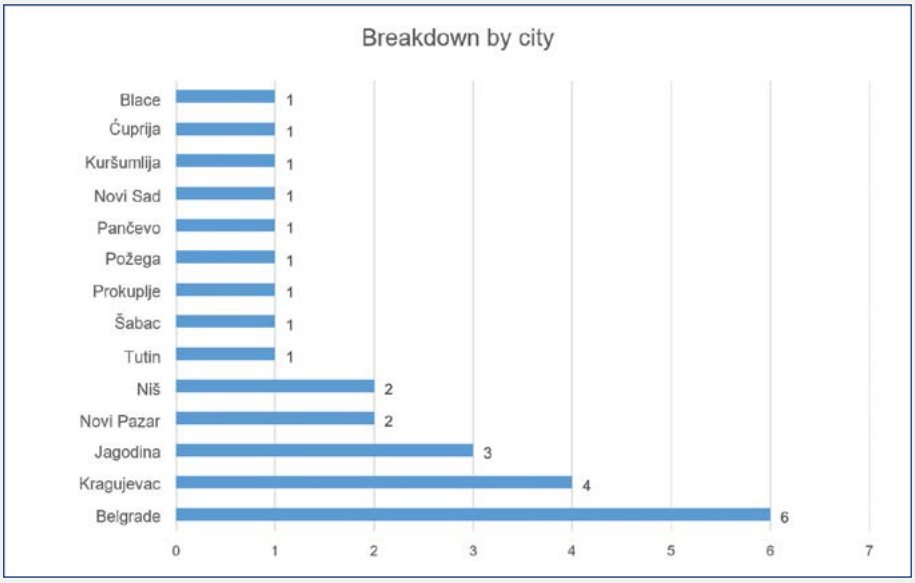
It follows that all decisions removing experts during the period examined and published in the Official Gazette of the Republic of Serbia were made in accordance with Article 11(2) of the Law on Court Experts, and that none of the 53 experts was removed for improper, unconscientious or incompetent performance. Without records of the total number of removal proposals, it is impossible to determine how many were submitted, who submitted them most often, or whether repeated proposals were made against particular experts. Nevertheless, the fact that 52 of 53 experts were removed at their own request indicates that removal proposals did not result in removal during the period examined. If any such proposals were submitted, the Ministry therefore refused or dismissed them.

The researchers know from personal and professional experience that the Register of Court Experts is not fully up to date. It still contains information on experts who have retired and no longer accept cases, and on experts who have died. This suggests that the Ministry conducts almost no ex officio checks for changes in an expert's status that may affect the expert's professional standing or the Register's accuracy, including facts that, by operation of law, require deletion from the Register.

iii) Publicly Available Information on the Appointment of Experts

No new court experts were appointed during the period examined, namely 2021 and 2022.

The court appointed a total of 26 experts in 2023. All appointment decisions were published on 1 September 2023 in the Official Gazette of the Republic of Serbia, No. 72/2023. All 26 newly appointed experts worked in economic and financial matters, indicating that the appointments resulted from the courts' need for more experts in that field.



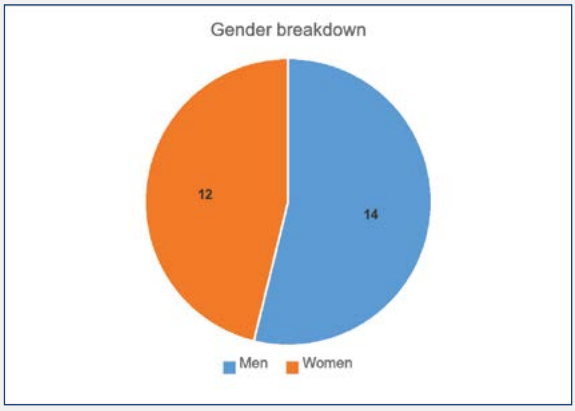
The largest number of appointed experts were from Belgrade (6), followed by Kragujevac (4) and Jagodina (3). Niš and Novi Pazar each had two new experts, while each remaining locality had one newly appointed expert in economic and financial matters, as shown in the chart.

The appointment procedure took place after the period examined (2021 and 2022), during which no new experts were appointed. The lack of appointment data for that period justified extending the analysis to the 2023 appointments and considering the appointment procedure itself. Those newly appointed will prepare expert reports and opinions for court proceedings in the coming period, which justified the researchers' efforts to establish how the procedure operates in practice.

Article 11 of the Law on Court Experts provides that presidents of first-instance courts are to notify the ministry responsible for justice of the need for experts in particular fields (paragraph 1), and that the Minister is to publish a public call for the appointment of experts in the Official Gazette of the Republic of Serbia and on the Ministry's website where the Minister determines that the number of experts in a particular field is insufficient (paragraph 2).

A review of the Ministry of Justice website shows that the most recent public call was published in the Official Gazette of the Republic of Serbia, No. 95/2021, on 1 October 2021. It concerned

appointing medical experts for the territorial jurisdiction of the Higher Court in Belgrade. No public call for experts in economic and financial matters was found throughout the Republic of Serbia. However, the decisions appointing those experts were published on 1 September 2023 in the Official Gazette of the Republic of Serbia, No. 72/2023.[1]



iv) Publicly Available Information on Civil Proceedings

The authors accessed publicly available information on civil proceedings concluded by a final decision during the ten years preceding the year of the research, in which applications for expert recusal had been made. The available information concerned civil proceedings before courts in southern Serbia and was obtained through the Courts Portal.[2]

The authors selected this sample, which covers a longer period than the period examined for removals, because data were limited and courts could not provide precise information on applications for expert recusal or disqualification. No rule or standard requires recording such applications separately in the court case management system.

The available data identified 45 cases in which an application for an expert's recusal had been made. Those cases constitute the random sample analyzed below. The researchers know the case reference numbers.

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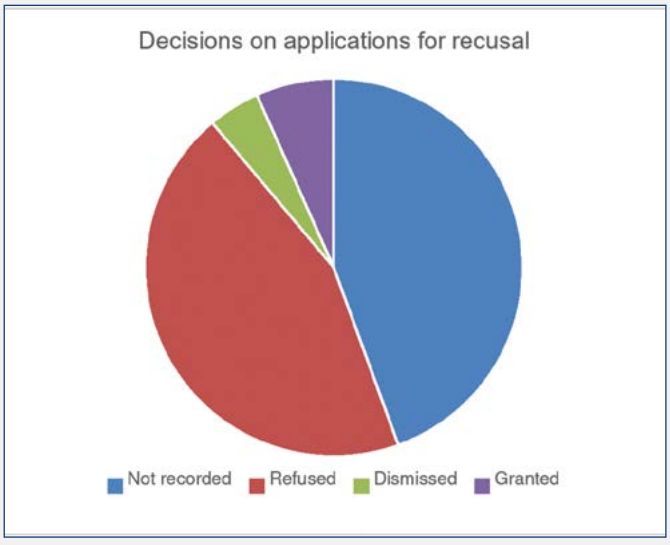
[1] https://www.mpravde.gov.rs/tekst/740/sudski-vestaci.php, accessed 15 September 2023.

[2] Available at: https://tpson.portal.sud.rs/tposvs/.

In 20 of the 45 cases examined, the record showed an application for recusal but no court decision. This represents approximately 45% of the cases reviewed. The cases were heard before the Commercial Court in Niš; the Basic Courts in Niš, Pirot, Dimitrovgrad, Vranje, Leskovac and Lebane; the Higher Court in Prokuplje; and the Commercial Court in Leskovac. The court may not have decided the application, which could constitute a breach of civil procedure, or may have decided it orally at a hearing and recorded the decision in the minutes. In the authors' view, any decision made on such an application should be recorded on the Courts Portal.

In another 20 cases, representing a further 45% of the sample, the case history on the Courts Portal recorded a decision refusing the recusal application. The Commercial Courts in Niš and Leskovac and the Basic Courts in Pirot, Prokuplje, Lebane, Aleksinac, Niš and Leskovac heard these cases. The reasons for those decisions could not be established. Nevertheless, the number of refused applications makes it reasonable to assume that, in some proceedings, parties use an application for recusal to express dissatisfaction with an expert report and opinion.

In two cases (4% of the sample), the courts dismissed the recusal application on procedural grounds. Those cases were before the Higher Court in Prokuplje and the Basic Court in Niš. The presiding judge is required to dismiss an application for recusal without delay if it is out of time, incomplete, or inadmissible.

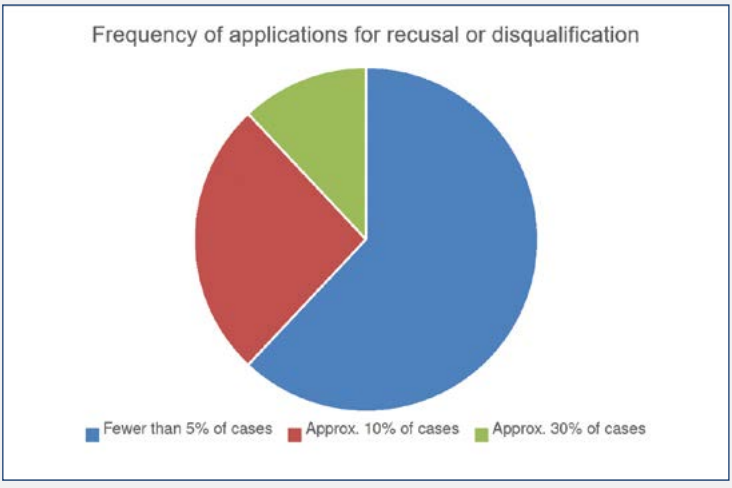


Three cases (6%) were identified in which the court granted an application for recusal before the Basic Court in Leskovac and the Commercial Court in Niš. The parties in those cases therefore successfully established circumstances that raised doubts about the expert's impartiality. The court decisions were not publicly available, so the specific circumstances indicating bias could not be examined.

v) Questionnaires

Questionnaires were sent to selected courts in southern Serbia to obtain information about expert conduct in proceedings; applications for recusal and disqualification; notification of the Ministry of Justice about fines and delays; and initiatives for the appointment and removal of experts. Judges from the Basic Courts in Niš, Pirot, Vranje, and Prokuplje; the Higher Courts in Leskovac, Prokuplje, and Niš; and the Commercial Court in Leskovac responded and provided relevant information on their practice in civil proceedings. A sample questionnaire is annexed to the report.

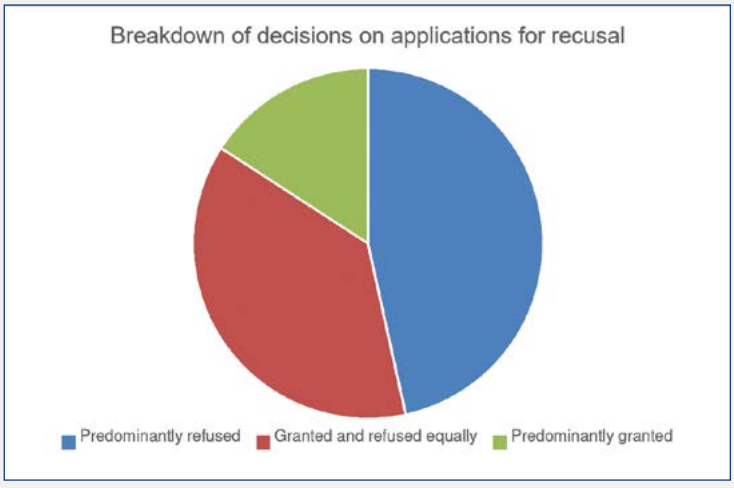
When asked to estimate how frequently applications for recusal or disqualification were made in cases involving expert evidence, courts responded in 62% of cases that this occurred in fewer than 5% of cases, in 26% of cases that it occurred in approximately 10%, and in 12% of cases that it occurred in approximately 30%.



Judges reported that the most common immediate reason parties gave for seeking an expert's disqualification was 'bias'. Among the statutory grounds offered, kinship with a party or the party's authorized representative was the most common, at 15%. All other stated grounds – dissatisfaction with the expert's work, lack of objectivity, an unclear report, delay, acting as an expert in other proceedings against the same party, and failure to comply with the court's instructions – were reported at very low levels of 3– 5%.

When asked what circumstances most often gave rise to doubt as to an expert's impartiality and prompted an application for recusal, judges gave a wide range of answers: the expert had been proposed by the opposing party; experience with the expert in other situations; acquaintance with the other party; favouring one side; the expert's valuation of the subject matter; previous experience with the expert; contact between the expert and the opposing party; dissatisfaction with the report; lack of expertise; a superficial approach; an unobjective report favouring a party; acting as an expert in other proceedings against the same party; poor experience in other cases; previous business relations; and incompetence. Some judges also noted that doubts about impartiality were at times unsupported.

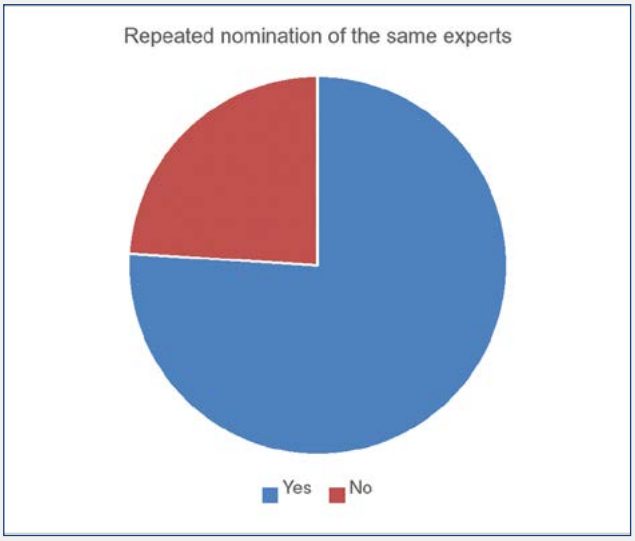
In 47% of responses, judges stated that decisions on applications for recusal were predominantly refusals. In 38%, they reported that applications were granted and refused in approximately equal numbers, while only 16% stated that the decisions predominantly granted applications.



Judges gave the following reasons for granting applications for an expert's recusal: appointing another expert because a party objected; a reasoned application where granting it served procedural economy and expediency; a party's objection to the proposed expert; acquaintance; kinship; the expert not being from the territorial jurisdiction of the relevant higher court; friendship; lack of objectivity; bias; an unclear report; delay; late submission of the report; and late responses to comments.

Asked what parties most frequently cited when objecting to a proposed expert, the most common responses were poor experience in earlier proceedings and lack of expertise. Other responses included suspected corruption, delay in preparing the report, personal conflict, bias and other grounds.

76% of judges reported a recurring pattern in the experts proposed by participants in the proceedings; 24% did not.



The most frequently cited reasons for this repetition were procedural economy, an insufficient number of experts in certain fields, professionalism, reliability and efficiency.

Where a previously appointed expert had failed to answer the assigned questions at all or in full, 41% of judges stated that they entrusted the examination to another expert. 21% stated that they did not do so or did so only in a negligible number of cases, 18% did so in approximately 10% of cases, and 12% did so in half of their cases.

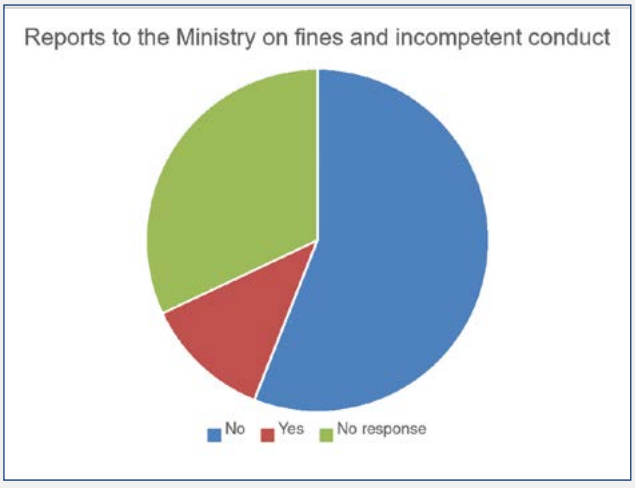
Where two earlier expert reports and opinions had not enabled the court to establish the facts, 38% of judges reported that the court commissioned further expert evidence from a third expert in a small number of cases. 35% stated that it did not do so at all or did so in a negligible number of cases. The remaining responses indicated that this occurred in 10%, two-thirds, or one-half of cases.

Regarding fining experts and ordering them to reimburse parties' costs, 79% of judges said this did not occur or occurred in only a negligible number of cases. The remaining 21% reported that it occurred in 10% or in a smaller number of cases.

Delay in preparing or submitting the report and opinion, failure to respond to a court summons, and failure to submit a report were cited with equal frequency as reasons for imposing a fine. Some judges selected more than one answer, covering all three situations.

88% of judges stated that, when selecting an expert, the court took account of the list of experts in the Register to distribute appointments evenly. 9% answered in the negative, while some questionnaires contained no answer.

26% of judges expressly stated that, when selecting an expert, they were guided by previous negative or positive experience with that expert. 9% answered in the negative. The remaining responses referred to professional competence and diligence, promptness and timeliness, willingness to cooperate, respect for the court, accuracy, precision, speed in preparing reports, clarity and concision, compliance with deadlines, expertise and efficien-

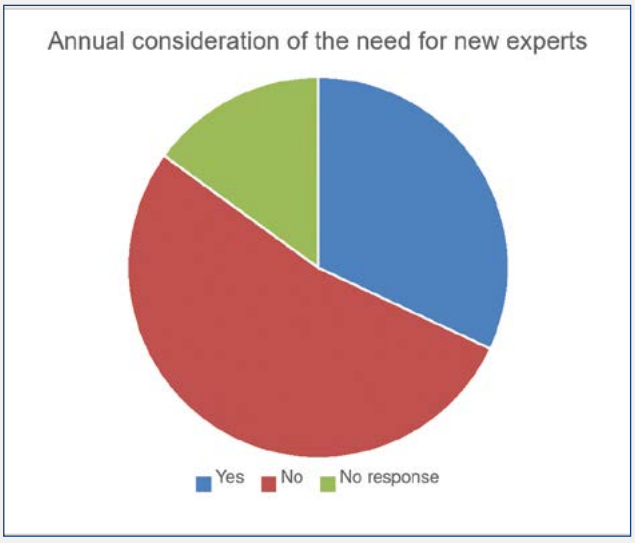


cy, economy, whether the expert declined complex cases, whether comments on the expert's reports were frequent, and whether reports were submitted late.

In 56% of responses, judges stated that they did not report fines, delays, or incompetent conduct by experts to the Ministry of Justice. Reports were sent in 12% of cases. The remaining responses did not provide an express answer.

In 82% of responses, courts stated that, in practice, they had not initiated proceedings to remove experts. In 6% of responses, proceedings had been initiated, but the outcome was unknown. The remaining responses contained no answer.

32% of judges stated that they considered the need to appoint new experts within the court's territorial jurisdiction each year at a meeting of judges. 53% answered in the negative, and 15% did not answer. The Basic Court in Niš also provided minutes from a meeting of its Civil Division at which the need for more experts in graphoscopy, agriculture and construction – subspecialty geodesy – was considered, and a conclusion was adopted unanimously.



vi) Analysis of the Relevant Legislation and Its Implementation

The legal status of experts, the conditions for their appointment and removal, their rights and duties, and all other relevant

matters are governed by the Law on Court Experts. The taking of expert evidence is governed by the specific procedural laws applicable to the relevant judicial or administrative proceedings, such as the Law on Civil Procedure and the Criminal Procedure Code.

Turning first to the conditions for appointment, Article 6 of the Law on Court Experts provides that a natural person must, in addition to satisfying the general statutory conditions for work in state authorities, meet the following specific conditions:[3]

1) hold appropriate higher education qualifications in the relevant field of expertise, obtained through second-cycle studies (graduate academic master's studies, specialist academic studies or specialist vocational studies), or through undergraduate studies;
2) have at least five years' professional experience;
3) possess professional knowledge and practical experience in the relevant field of expertise;
4) be fit and proper to perform expert duties.

Exceptionally, a person who has completed at least secondary education may be appointed as an expert if there are not enough experts with higher education qualifications in the relevant field.

As regards professional knowledge and practical experience, Article 7 provides that an applicant may prove this criterion through published professional or scientific papers; a certificate of participation in conferences organized by professional associations; or opinions or recommendations from courts, other state authorities, professional associations, scientific or other institutions, or legal persons for which the applicant worked or performed professional services. An applicant holding a scientific title is not required to submit this evidence.

At first glance, systemic deficiencies in defining the selection criteria and the method for verifying compliance with the statutory requirement are easy to overlook. Professional knowledge and

[3] Article 45(1) of the Law on Civil Servants provides that an adult citizen of the Republic of Serbia may be employed as a civil servant if that person has the prescribed qualifications and meets the other conditions laid down by law, other regulations and the rulebook on internal organization and staffing of the state authority; has not previously had employment with a state authority terminated for a serious breach of employment duties; and has not been sentenced to a term of imprisonment of at least six months.

practical experience are the only quantitatively determinable and measurable parameters, yet the selection procedure includes no qualitative means of assessing whether those requirements are genuinely met.

The Law first gives applicants broad scope to demonstrate professional knowledge through published scientific or professional papers. It prescribes neither a minimum number of papers nor, more importantly, the categories of journals in which they must be published. On a permissible interpretation of these provisions, the Ministry could enter in the Register a person with few papers, or even a single scientific paper, published in an uncategorized journal or a journal whose category does not itself demonstrate the applicant's expertise. A large group of persons could therefore formally meet the conditions even though the evidence submitted does not itself establish professional competence.

Moreover, because the prescribed forms of evidence are alternatives, an applicant need not submit published papers if the applicant provides a certificate of attendance at a conference organized by a professional association. No detailed conditions define what such a conference must involve before attendance can be treated as reliable evidence of expertise. Even a recommendation from such an association or from a legal person for which the applicant previously worked is sufficient.

Applicants holding scientific titles are exempt from submitting even this broadly defined body of evidence. This is understandable because a previously acquired scientific title is presumed to indicate expertise. However, expert work in judicial and other proceedings differs significantly from teaching and research. This group should therefore be assessed as well. Under the existing system, competence can be examined only in removal proceedings initiated after an expert has performed duties improperly, unconscientiously or incompetently.

The Law on Court Experts imposes no obligation of continuing professional development and establishes no mechanism to verify an expert's knowledge or work after appointment, except in removal proceedings. Appointment is permanent and lasts until removal; it is not time-limited or otherwise restricted. If an applicant submits a certificate of conference attendance or a published professional or scientific paper with the application and is appointed, there is no duty to undertake further professional or

scientific work or training. For the next twenty years or more, the expert need not engage in any of the activities that were conditions for the original appointment.

All these matters may be assessed in removal proceedings initiated by a reasoned proposal submitted by a court, another authority conducting proceedings, a party, or another participant in judicial or other proceedings, for incompetent, improper, or unconscientious performance.

Under Article 19 of the Law on Court Experts, an expert will be removed:

1) at the expert's own request;
2) if it is established that the conditions based on which the expert was appointed did not exist or have ceased to exist;
3) if the expert is convicted of a criminal offense that renders the expert unfit or unsuitable to perform expert duties;
4) if the expert is made subject to a protective measure prohibiting the performance of an activity in the field in which the expert provides expertise;
5) if the expert's legal capacity is withdrawn or restricted by a court decision;
6) if the expert is found, in the manner prescribed by law, to have lost capacity for work;
7) if the expert performs expert duties improperly, unconscientiously or incompetently.

An expert performs duties improperly or unconscientiously if, without justification, the expert refuses to provide expertise, fails to respond to summonses from the court or another authority conducting the proceedings, fails to complete the examination within the prescribed time limit, or in other cases provided for by the Law. An expert performs duties incompetently if the expert provides incomplete, unclear, contradictory, or inaccurate findings.

The Law also provides that, in proceedings initiated by a proposal for an expert's removal, the Minister may establish a three-member expert panel composed of leading specialists in the relevant field to assess the expert's professional competence and may allow the expert to comment on the facts and circumstances on which the proposal is based.

These provisions suggest that most objections by parties to an expert's work in a particular case will fall within improper, unconscientious or incompetent performance under Article 19(1)(7) of the Law on Court Experts. The other grounds principally concern the expert's personal circumstances or facts not readily available to the parties, whereas the final ground concerns the expert's work and conduct in individual cases.

Contrary to expectations, no expert was removed for improper, unconscientious or incompetent performance between 1 January 2021 and 31 December 2022. As noted above, the Ministry of Justice does not record the number of removal proposals or the persons or bodies submitting them.

A further weakness in Article 19 is that the Minister may, but need not, establish a three-member panel of leading specialists in the relevant field to assess professional competence. Improper and unconscientious performance primarily concerns compliance with statutory duties and time limits, which can be established relatively easily. Incompetent performance, by contrast, requires a professional assessment of the submitted reports and opinions. A panel of specialists in the field will always be needed because the Minister will not, as a rule, possess the knowledge and skills necessary to assess that criterion across every field of expertise.

The removal procedure, and thus the review of conscientious and competent performance, has only two opposing outcomes: removal or refusal of the proposal. This overlooks cases in which some time limits or procedures were not observed, but the breach is not serious enough to justify removal. A proposal for removal will probably be refused in such a case, without any warning or lesser sanction being imposed on the expert.

Domestic law already recognizes disciplinary liability mechanisms involving a range of measures. Similar systems of professional supervision and disciplinary assessment apply to other holders of public authority, including public enforcement officers, public notaries and insolvency administrators.

For example, Articles 526-528 of the Law on Enforcement and Security (Official Gazette of the Republic of Serbia, Nos. 106/2015, 106/2016 – authentic interpretation, 113/2017 – authentic interpretation, 54/2019, 9/2020 – authentic interpretation, and 10/2023 – other law) prescribe minor and serious dis-

ciplinary offenses and different disciplinary measures. Article 150 of the Law on Public Notaries (Official Gazette of the Republic of Serbia, Nos. 31/2011, 85/2012, 19/2013, 55/2014 – other law, 93/2014 – other law, 121/2014, 6/2015 and 106/2015) similarly classifies disciplinary offences by public notaries as minor breaches of notarial duty or disciplinary infractions. Finally, Article 26(3) of the Bankruptcy Law (Official Gazette of the Republic of Serbia, Nos. 104/2009, 99/2011 – other law, 71/2012 – Constitutional Court decision, 83/2014, 113/2017, 44/2018 and 95/2018) provides that, where irregularities in an insolvency administrator's work are established, the authorised organisation may, following disciplinary proceedings, impose a warning, public warning, fine or revocation of the licence.

Although court experts cannot be equated entirely with those holders of public authority, the system for assessing their work should include measures for cases in which deficiencies or irregularities are inconsistent with professional standards but are not serious enough to justify removal, the most severe measure available against an expert entered in the Register.

A public warning or fine before removal would be more appropriate. In some cases, such sanctions could punish, penalize irregularities, and deter further unconscientious or incompetent work. Under the existing law, if removal proceedings do not end in removal, an expert whose work raises doubts about regularity or competence has no incentive to remedy the problem. The expert may reasonably expect the conduct to continue without consequence because the Ministry has found that it does not warrant removal.

Amending procedural laws to require judges to notify the Ministry of Justice of every fine imposed would significantly contribute to experts' professionalization and discipline. The Law on Court Experts should also be amended to give the Ministry a more proactive and precisely defined role, including powers to review experts' work of its own motion, initiate removal proceedings and conduct disciplinary proceedings.

Parties should also have effective procedural remedies during proceedings where an expert lacks adequate knowledge in the relevant field. This may be apparent from a superficial or unsupported approach to the questions examined or from a report and opinion containing objectively inaccurate or untrue facts, no or in-

sufficient reasoning or scientific support beyond the knowledge of the court and parties, inadequate explanations of material issues, or a failure to comply with the court's directions to clarify particular questions.

In addition to continuing professional development, initial or periodic training should familiarise experts with the relevant procedural laws and with their rights and duties. Experts should understand every material aspect of their procedural position and role: the required contents of an expert report and opinion; the duty not to express an opinion on whether a claim, objection or charge is well founded, but to present facts; and the duty to remain consistently objective. In practice, these requirements are often not met. Reports often lack a simple, concise and reasoned explanation of the scientific or practical methods used to reach the result. They also fail to set out the scientific principles and steps used to form the opinion, which would enable participants without specialist knowledge to understand the process leading to the conclusion.

The Register of Court Experts and the Ministry's related records should also be improved. In addition to the personal data prescribed by Article 16(2) of the Law on Court Experts, the Ministry should record the number of removal proposals, both for all registered experts and for each individual expert. It should give particular weight to repeated complaints when assessing grounds for removal, as they are among the simplest initial indicators of irregularities that may later result in a finding of liability and sanctions.

The regulation of real estate valuation, a field closely related to expert work, provides a positive example. In Serbia, the Law on Real Estate Valuers (Official Gazette of the Republic of Serbia, Nos. 108/2016 and 113/2017 – other law) details valuers' status, rights, and duties. Unlike the Law on Court Experts, it requires valuers to comply with National Standards, a code of ethics, and rules of professional conduct for licensed valuers. These instruments are intended to ensure valuation reports meet the highest standards of professionalism, integrity, clarity, reliability, and impartiality, and comply with internationally recognized professional standards (Article 5). Valuers must keep confidential all information, facts, and circumstances learned in the course of a valuation, except information already in the public domain (Article 7). To obtain a license, a valuer must complete professional training

and pass a final knowledge assessment before the training provider (Article 9). A license is issued for three years and renewed on application supported by evidence of continuing professional development (Article 11). Unlike experts, valuers must hold professional indemnity insurance (Article 12). Their work is subject to regular mandatory review (Article 36), and the Law regulates disciplinary proceedings and measures (Articles 8 and 39).

These principles of the Law on Real Estate Valuers could also apply to experts. National standards and a code of ethics would further regulate and institutionalize the court expert profession. Mandatory professional training, knowledge assessment, and continuing development would promote professionalization. Clear and specific disciplinary rules would strengthen accountability and deter breaches of professional standards and avoidance of statutory duties. The ultimate result would be more efficient court proceedings and decisions based on reports and opinions on which parties can reasonably rely, supported by transparent preparation, prescribed content and expertise subject to regular review.

IX CONCLUSION

The Law on Civil Procedure regulates experts' conduct in civil proceedings in detail. However, courts attach insufficient importance to the professionalism and accountability of experts engaged in those proceedings. Courts generally seek to appoint experts with whom they have had positive experience. By contrast, experts whose conduct has been unprofessional or irresponsible usually face no specific consequences. Courts rarely fine experts, so the only consequence is that judges with negative experience stop appointing them. This appears to stem from judges' and courts' reluctance to impose justified penalties, draw public attention to unprofessional and irresponsible conduct, or submit complaints and removal initiatives to the Ministry of Justice. Courts should therefore adopt strategic instruments, and legislation should be amended where appropriate, to emphasize the expert's role in proceedings, the duty to act professionally and responsibly, and the need to sanction incompetent work.

As regards experts' status, the statutory rules depart from modern principles of professionalization, accountability and ethics reflected in the regulation of other professions, especially justice-sector professions such as public enforcement officers, attorneys-at-law, insolvency administrators and public notaries, as well as real estate valuers. Experts' accountability and professionalism should be strengthened primarily through appropriate legislative amendments, guidelines, and a code of conduct. These should regulate initial training, continuing education and specialization, verification of professional competence, and disciplinary and procedural liability in greater detail – areas in which neither courts nor interested parties currently play a sufficiently active role. Appointment and removal procedures and professional records should also be updated and made more transparent so that all interested persons can obtain information on circumstances relevant to the conduct of individual experts.

X RECOMMENDATIONS

Based on the data obtained and the Ministry of Justice's and the courts' practice, the following recommendations can be made concerning the status and role of experts.

1. The Register of Court Experts is out of date: it still contains information on experts who have ceased to perform expert work or have died. The Ministry of Justice should therefore be required to verify and update Register data of its own motion and, where the statutory conditions for deletion are met, to initiate and conduct deletion proceedings of its own motion.

2. The Register is incomplete because it does not contain sufficiently detailed information on experts' status, such as proposals for removal or sanctioning. The Register should include a detailed presentation of all information relevant to an expert's professional status.

3. When collecting material for this research, the authors encountered obstacles that limited access to relevant data and information. The Ministry lacks open data and internal records, statistics, analytics, and cross-references that would enable it to readily extract individual or aggregate information on experts. The Ministry should establish access to official records and enable internal and external searches of the Register by criteria relating to experts' status, including grounds for removal, measures imposed, whether decisions have become final and binding, and decisions annulling removal decisions.

4. The small number of available Ministry decisions concerning experts' status reveals shortcomings in the reasoning, principally a lack of reasons and an incomplete account of the facts. Decisions are not published in full in the Official Gazette; only the operative part appears, without the reasons. Removal decisions – particularly those not made at the expert's own request – should contain more detailed reasoning so that the public can understand the facts and reasons leading to the decision. Decisions should also be published in full as a matter of duty or established practice.

5. The Case History section of the Courts Portal shows that courts do not record applications for the recusal or disqualifica-

tion of experts as a separate type of submission, or separately record decisions on them, whether made by a separate ruling, orally and entered in the minutes, or as part of another decision. To improve transparency and enable data on recusal and disqualification in court proceedings to be identified, court software should be amended, or a binding rule introduced requiring complete and accurate recording of applications and decisions.

6. In various types of proceedings, especially mass claims, the same experts are appointed repeatedly. Courts therefore do not follow the order of experts in the Register, resulting in unequal distribution of work. The courts' duty to take the order in the Register into account when appointing experts should be emphasized.

7. Some fields – economic and financial matters, agriculture, geodesy and graphoscopy – have too few experts, and individual courts have proposed new appointments for their territorial jurisdictions. The Ministry rarely issues public calls for new experts, so court initiatives often receive no response. Public calls should be conducted regularly, and the need for experts in particular fields assessed.

8. Case histories show that experts frequently disregard procedural discipline, particularly the timely preparation of reports and opinions, causing adjournments and delays. Court rulings ordering expert evidence should set strict deadlines. Courts should impose penalties for unjustified failures to meet deadlines, including late submission of initial and supplementary reports and opinions, and order experts to reimburse the resulting procedural costs.

9. Information obtained from the Ministry indicates that courts generally do not report fines imposed on experts. The duty to report fines regularly should be emphasized so that the Ministry can take the steps needed to establish liability and initiate removal proceedings of its own motion where procedural rules and deadlines are breached repeatedly and continuously.

10. Courts generally tolerate unprofessional conduct. Instead of initiating removal proceedings after poor experiences, procedural breaches, or improper or incomplete reports and opinions, they avoid appointing the expert again. The courts' duty to submit initiatives to the Ministry for removal or other sanctions where statutory grounds exist should be emphasized.

11. The conditions for appointment are relatively lenient. No substantive assessment of knowledge or fitness is required, and training for court experts is not mandatory, unlike in comparable professions. Formal experience in a broadly defined field is sufficient and is not substantively examined. The Law on Court Experts should require an assessment of professional competence for an expert without a scientific title.

12. Experts receive no training in court procedure and are not tested on the rules governing expert evidence in civil or criminal proceedings, often resulting in deficient reports and opinions. Initial training should cover participation in court proceedings and the preparation of reports and opinions across different types of proceedings and fields. National standards should also be adopted to harmonize and further professionalize experts' work.

13. Experts have no duty of continuing professional development. Legislation should be amended to require continuous development and periodic evaluation of acquired knowledge.

14. Experts are appointed permanently, with no requirement to review their entry in the Register or renew a license or registration. Renewal procedures should require periodic reassessment of the conditions for continued registration, focusing on the expert's professional development.

15. Experts are generally removed at their own request; very few removals are based on established liability. Breaches of discipline remain unsanctioned, principally because courts do not report them. Courts should report on the work of every expert engaged, especially breaches of professional and procedural rules, with particular attention to timeliness and the professional quality of reports and opinions.

16. In principle and in substance, experts are not held accountable except in rare removal cases. Rules on disciplinary liability, measures and sanctions should be introduced, including public warnings, fines and removal as the most severe measure. A national code of ethics should be adopted, with disciplinary liability for breaches. Professional indemnity insurance should also be mandatory.

XI RECOMMENDATIONS – TABULAR OVERVIEW

Based on the data obtained and the Ministry of Justice's and the courts' practices, the following recommendations can be made on the status and role of experts.

Problem	Recommendation
The Register of Court Experts is out of date.	Require the Ministry of Justice to verify and update experts' data of its own motion and, where statutory grounds exist, to initiate deletion from the Register of its own motion.
The Register of Court Experts is incomplete.	Provide a detailed presentation of all facts relevant to an expert's professional status.
Lack of open data, internal records, statistics, analytics and cross-references	Enable internal and external searches of the Register by criteria and parameters relating to experts' status, including grounds for removal, measures imposed, finality of decisions and annulment of removal decisions.
Insufficient reasoning in removal decisions not made at the expert's own request	Publish removal decisions in full in the Official Gazette of the Republic of Serbia and provide detailed reasons addressing the grounds for removal and the procedure conducted.
Applications for recusal and disqualification are not recorded in the case history.	Require applications and decisions to be recorded, whether the decision is made by a separate ruling or entered in the hearing record.
Repeated appointment of the same experts	Observe the order of experts in the Register and engage a wider range of experts.
Insufficient number of experts	Appoint new experts in fields in which courts identify a need through a public call.
Lack of procedural discipline by experts	Set strict deadlines for reports and opinions; fine experts for late initial and supplementary reports and opinions; and require them to reimburse costs they cause.
Failure to report to the Ministry of Justice	Impose a strict and express duty on courts to report fines imposed on experts to the Ministry.
Courts do not initiate removal proceedings and tolerate unprofessional experts by avoiding future appointments.	Impose a strict and express duty on courts to submit removal initiatives where statutory grounds exist.

Problem	Recommendation
Lenient appointment conditions limited to formal requirements	Amend the Law on Court Experts to require testing of the competence of experts who do not hold a scientific title and substantive assessment of candidates' professional knowledge.
Experts lack procedural training and reports and opinions contain formal deficiencies.	Establish initial training on participation in different proceedings and preparation of reports and opinions; adopt national standards to professionalize expert work.
No duty of continuing professional development	Amend the Law on Court Experts to require continuing development and re-evaluation.
Permanent appointment	Require renewal of registration or license after reassessment, with a focus on continuing professional development.
Experts are rarely removed for grounds other than their own request	Require objective court reporting on all experts engaged, focusing on timeliness, competence and the quality of reports and opinions.
Lack of accountability	Introduce disciplinary liability and sanctions, including public warnings, fines and removal; adopt a national code of ethics and disciplinary liability for breaches; and require professional indemnity insurance.

XII LEGAL SOURCES

1) Law on Civil Procedure (Official Gazette of the Republic of Serbia, Nos. 72/2011, 49/2013 – Constitutional Court decision, 74/2013 – Constitutional Court decision, 55/2014, 87/2018 and 18/2020)
2) Law on Court Experts (Official Gazette of the Republic of Serbia, No. 44/2010)
3) Law on Free Access to Information of Public Importance (Official Gazette of the Republic of Serbia, Nos. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021)
4) Law on Civil Servants (Official Gazette of the Republic of Serbia, Nos. 79/2005, 81/2005 – corrigendum, 83/2005 – corrigendum, 64/2007, 67/2007 – corrigendum, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020 and 142/2022)
5) Law on Enforcement and Security (Official Gazette of the Republic of Serbia, Nos. 106/2015, 106/2016 – authentic interpretation, 113/2017 – authentic interpretation, 54/2019, 9/2020 – authentic interpretation and 10/2023 – other law)
6) Law on Public Notaries (Official Gazette of the Republic of Serbia, Nos. 31/2011, 85/2012, 19/2013, 55/2014 – other law, 93/2014 – other law, 121/2014, 6/2015 and 106/2015)
7) Bankruptcy Law (Official Gazette of the Republic of Serbia, Nos. 104/2009, 99/2011 – other law, 71/2012 – Constitutional Court decision, 83/2014, 113/2017, 44/2018 and 95/2018)
8) Law on Real Estate Valuers (Official Gazette of the Republic of Serbia, Nos. 108/2016 and 113/2017 – other law)

XIII DATA COLLECTION INSTRUMENTS

The following instruments were used to collect data: a questionnaire for collecting information from case files, requests for access to information of public importance, and an interview questionnaire.

RESEARCH STUDY

Disqualification and Recusal of Court Experts in Civil Proceedings and Their Removal from the Official Register

QUESTIONNAIRE FOR COLLECTING DATA FROM JUDGES

DATE OF DATA COLLECTION: _____

COURT: _____

1. In your best estimate, how frequently are applications for the recusal or disqualification of experts made relative to the number of cases in which expert evidence is ordered?
   a) More than 60%
   b) Approximately 50%
   c) Approximately 30%
   d) Approximately 10%
   e) Fewer than 5%
2. What immediate ground do parties most frequently cite for the disqualification of an expert?
   a) Kinship with a party
   b) Kinship with the party's authorized representative
   c) The expert is a party to the proceedings
   d) The expert is a creditor or debtor of a party
   e) None of the above
   f) Other _____
3. What immediate ground do parties most frequently cite for the recusal of an expert – how is their doubt as to the expert's impartiality most often manifested?

   _____

4. What, as a rule, are the court's decisions on applications for recusal and disqualification?
    a) Predominantly granted
    b) Granted and refused in approximately equal numbers
    c) Predominantly refused
5. What does the court most frequently accept as a justified ground for recusal?

    _____
6. What do parties most frequently cite when objecting to a proposed expert? (More than one answer may be selected.)
    a) Lack of expertise
    b) Poor experience in previous proceedings
    c) Origin or geographical distance
    d) Suspected corruption
    e) Political activity
    f) Other _____
7. Is there a recurring pattern in the experts proposed by participants, and if so, what is it (for example, different participants frequently proposing the same expert or the same authorized representatives proposing the same expert)?
    a) Yes b) No
8. If the answer to the preceding question is yes, what does the court consider the most common reason for this practice? (More than one answer may be selected.)
    a) Procedural economy
    b) Kinship with the party's authorized representative
    c) The expert is a party to the proceedings
    d) The expert is a creditor or debtor of a party
    e) None of the above
    f) Other _____
9. In practice, how frequently does the court entrust the examination to another expert where the previously appointed expert did not answer the assigned questions at all or in full?
    a) In more than two-thirds of cases
    b) In half of cases
    c) In every third case

d) In 10% of cases
e) Yes, but in a smaller number of cases
f) Never, or in a negligible number of cases

10. In practice, how frequently does the court order a further examination by a third expert where two earlier reports and opinions did not enable it to establish the facts?
    a) In more than two-thirds of cases
    b) In half of cases
    c) In every third case
    d) In 10% of cases
    e) Yes, but in a smaller number of cases
    f) Never, or in a negligible number of cases

11. In practice, how frequently does the court fine experts or order them to reimburse parties' procedural costs?
    a) In more than two-thirds of cases
    b) In half of cases
    c) In every third case
    d) In 10% of cases
    e) Yes, but in a smaller number of cases
    f) Never, or in a negligible number of cases

12. What are the most frequent reasons for fining experts?
    a) Failure to submit a report
    b) Delay in preparing or submitting a report
    c) Failure to respond to a court summons
    d) Insulting parties, the court or other participants in the proceedings
    e) Failure to provide a report and opinion
    f) Other _____

13. When selecting an expert, does the court take account of the list of experts in the Register of Court Experts?
    a) Yes b) No

14. When selecting an expert, is the court guided by previous negative or positive experience with that expert and, if so, what are the most common experiences?

    _____

15. Does the court notify the Ministry of Justice of fines imposed on experts or of delays and incompetent conduct by experts?

_____

16. Has the court initiated proceedings for the removal of an expert in practice and, if so, what was the outcome?
    a) Yes, and the court is aware of cases in which experts were removed or otherwise sanctioned
    b) Yes, but the proceedings did not end in removal or a penalty
    c) Yes, but the outcome is unknown
    d) No
    e) Other _____

17. Does the court consider the need to appoint new experts within its territorial jurisdiction each year at a meeting of judges?

_____