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Final Report[1]

Law Society EU AGIS 06 Project
Safeguarding Expert Evidence

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The Slovak Task Force within the scope of the Actions Required v1.4 in the framework of the EU AGIS Project hereby submits this Final Report. The Report is structured around the

[1] [1] The Task Force Report from Slovakia represents the views of the SlovakianTask Force and may not represent the views of the Law Society of Enlgand and Wales.

Initial Report Guidance, and responds to issues raised in Sections 16, 22, 25, 31 and 38 of the above-mentioned Guidelines.

Basic legislation applicable to expert evidence in criminal proceedings:

1. Act No. 382/2004 on Experts and Expert Evidence (Including Interpreters and Translators) as amended from time to time
2. Regulation of the Slovak Ministry of Justice No. 490/2004 implementing Act No. 382/2004 on Experts and Expert Evidence (Including Interpreters and Translators) as amended from time to time
3. Regulation of the Slovak Ministry of Justice No. 491/2004 on Fees, Compensations, Costs and Expenses and Lost Time Compensation for Experts, Interpreters and Translators
4. Act No. 301/2005 (Code of Criminal Procedure)
5. Explanatory Memorandum to Act No. 382/2004 on Experts and Expert Evidence (Including Interpreters and Translators) as amended from time to time
6. Explanatory Memorandum to Act No. 301/2005 (Code of Criminal Procedure)

I. INSTRUCTION OR APPOINTMENT OF EXPERTS

I.1. Who may instruct or appoint an expert?

Relevant legislation: *Sec 2(1) and (3); Sec. 3, 4, 5, 6, 7, 9, 11 and 28 of Act No. 382/2004 on Experts and Expert Evidence*
Sec. 142, 143, 144 and 147 of Act No. 301/2005 (Code of Criminal Procedure)

I.1.1. First of all, it is necessary to deal with the term "appointment" of an expert. The applicable Act on Experts and Expert Evidence departs from the previously-used system of appointing someone as an expert. At present, if an individual or legal entity meets statutory requirements for being registered in the official register of experts, such person becomes eligible by virtue of law to be registered in the official register of experts in a particular field of expertise; the official register is administered by the Slovak Ministry of Justice. Anyone who has applied for

registration in the official register of experts must have successfully passed an examination of professional competence (prescribed by law in individual fields of expertise, see Annex No. 1 to Regulation No. 490/2004, which requires successful completion of specialised education).

I.1.2. Moreover, individuals and legal entities with their residence or registered office in any EU Member State or in any state, which is a Contracting Party to the Agreement on the European Economic Area, may also be registered in the official register of experts.

I.1.3. Please, note that there is one exception applicable to the instruction of an expert. In some cases, an expert can be either an individual or legal entity who has proved to have necessary specialist knowledge in the field of expertise, even though he is not registered in the official register of experts, provided that he was appointed as an expert under Sec. 15 of the Act on Experts and Expert Evidence (provided that such person gave his consent to such appointment, took an oath, and there is no other expert registered in the official register of experts in the particular field of expertise, or any expert registered in the official register is unable to produce his expert report for serious reasons). An expert so instructed may provide his services only to a court or other public body in the particular criminal matters, i.e. he is the so-called "ad hoc" expert.

I.1.4. An expert for the purposes of the criminal proceeding may be instructed by a law enforcement agency (investigating officer or prosecutor) at the pre-trial stage and by a presiding judge at the court trial stage. Such decision may be challenged for substantive reasons or for reasons concerning the expert´s impartiality. The instruction process is prescribed by law (as it has been mentioned above, an expert may be both an individual (be it either a person registered in the official register of experts or an expert appointed based on his oath) and legal entity (specialised expert organisation)).

I.1.5. In the context of the adversary procedural system, either party (especially the accused/defendant or the victim) may also directly instruct an expert registered in the official register of experts in the particular field of expertise to prepare the expert

report (be it either professional perspective, opinion, confirmation or explanation) at the party´s own cost (relationship between the client and expert shall be governed and construed under a contract for work).

I.2. Limitations regarding those who can act as experts

Relevant legislation: *Sec. 5, 7, 9, 11, 16, 27, 28, 33 of Act No. 382/2004 on Experts and Expert Evidence*
Sec. 143(2), Sec. 144 of Act No. 301/2005 (Code of Criminal Procedure)

Criteria for determining who may stand as an expert are prescribed by law as follows (quality and membership standards):

I.2.1. *Personal criteria* (an expert must have legal capacity, which may not be diminished; an expert must be a person of integrity; he must have taken the oath; he must have appropriate technical equipment to be able to provide his services; within three previous years he has not been stricken off the official register of experts under a final decision, or has not been banned from the provision of his expert services or temporarily suspended from practice).

I.2.2. *Professional criteria* (professional minimum training, examination of professional competence, in some cases completion of specialised education, 7-years´ experience and practice in the field of expertise).

I.2.3. *Territorial criteria* (residence or registered office in the EU Member States, or in a state, which is the Contracting Party to the Agreement on the European Economic Area, plus an aptitude test).

I.2.4. Insurance with the Limit of Liability of at least SKK 1 million per any single occurrence.

I.2.5. A requirement of the expert's impartiality in relation to the entity or to the matter at issue.

I.2.6. As already mentioned in Sec. I.1.3. above, the applicable law provides for exceptions: in some cases, an expert can be either an individual or legal entity even though he is not registered in the official register of experts, provided that he was appointed as an expert under Sec. 15 of the Act on Experts and Expert Evidence (provided that such person gave his consent to such appointment, took an oath, and there is no other expert registered in the official register of experts in the particular field of expertise, or any expert registered in the official register is unable to produce his expert report for serious reasons). An expert so instructed may provide his services only to a court or other public body (Sec. 143(2) of the Code of Criminal Procedure) and only in the particular criminal matter.

I.2.7. An expert may appoint consultants to assist him in certain issues (such consultant need not be a sworn expert himself registered in the official register of experts); however, the expert´s liability for the report shall not be affected or prejudiced by the appointment of consultants.

I.3. Process to instruct an expert

Relevant legislation: *Sec. 142, 143, 144 and 147 of Act No. 301/2005 (Code of Criminal Procedure)*

I.3.1. As already mentioned in Sec. I.1.4 above, an expert for the purposes of the criminal proceeding may be instructed by a law enforcement agency (investigating officer or prosecutor) at the pre-trial stage and by a presiding judge at the court trial stage. Such decision may be challenged for substantive reasons or for reasons concerning the expert´s impartiality. The instruction process is prescribed by law (as it has been mentioned above, an expert may be both an individual (be it either a person registered in the official register of experts or an expert appointed based on his oath) and legal entity (specialised expert organisation)).

I.3.2. As already mentioned in Sec. I.1.5 above, in the context of the adversary procedural system, either party (especially the accused/defendant or the victim) may also directly instruct an expert registered in the official register of experts in the particular field of expertise to prepare the expert report (be it either professional

perspective, opinion, confirmation or explanation) at the party´s own cost (relationship between the client and expert shall be governed and construed under a contract for work).

I.4. Level of disclosure of information and evidence by experts in law and in practice

Relevant legislation: *Sec. 16 of Act No. 382/2004 on Experts and Expert Evidence*

I.4.1. The level of disclosure of information and evidence by experts is mainly provided for in Sec. 16 of the Act on Experts and Expert Evidence. The expert's role is to provide specialist and expert services to the client subject to the terms and conditions laid down in the above-mentioned Act. The basic role to be performed by the expert is to express (based on his expertise and skills applied to certain specific facts or situations while using scientific methods or procedures) a highly probable and objective finding regarding conditions, events, situations, circumstances or facts which occurred, exist or will occur in the form described in the executive summary and conclusion of the expert report, irrespective of whether or not he can verify such executive summary and conclusion via his own sensory knowledge.

I.4.2. The level of disclosure of information and evidence by experts in practice is, when compared to other evidence, very important. It has become quite common in practice that a large part of judgements are regarded as "expert judgements." For this reason, the requirement of the expert´s impartiality is of prime importance (expert fees are set in the Regulation of the Slovak Ministry of Justice).

I.5. Degree of standards and quality control of expert witnesses

Relevant legislation: *Sec. 19 and 29 of Act No. 382/2004 on Experts and Expert Evidence*

I.5.1. The degree of standards and quality control of expert witnesses is high. The Act on Experts and Expert Evidence sets forth several quality control mechanisms. Quality control powers are exercised by the Slovak Ministry of Justice with the support of

the Expert Institute which, as a legal entity, is a specialised professional organization acting in the capacity of a departmental and methodological centre in the established field of work registered in the official register.

I.5.2. The Ministry supervises expert services by:

a) Monitoring experts' methods, procedures and adherence to the law
b) Handling complaints about experts´ services
c) Inspection of experts´ journals
d) Monitoring of systematic continuous education and qualification enhancement (mandatory testing of expert´s professional competence in the particular field of expertise once in 5 years)
e) Review of performance of duties and obligations by expert institutes imposed by virtue of law.

I.6. Models of quality control of experts

Relevant legislation: *Sec. 19 and 29 of Act No. 382/2004 on Experts and Expert Evidence*
Sec. 19 et seq. of Regulation No. 490/2004

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e) Review of performance of duties and obligations by expert institutes imposed by virtue of law.

I.6.2. Supervision and oversight by the Ministry of Justice in the case of ad-hoc appointed experts is laid down in Sec. 19 et seq. of Regulation No. 490/2004.

1.7. How quality control standards are perceived and responded to by other criminal justice practitioners

I.7.1. The perception of quality control standards is positive. Quality control standards are based on international agreements entered into within the EU framework (approximation and implementation of standards) which are superior to the Slovak national law and by which the Slovak Republic is bound. Thus, quality control standards are guaranteed to the same extent as in other democratic EU Member States with the rule of law.

I.7.2. Moreover, quality control standards are also perceived positively by parties to criminal proceedings (litigants) themselves. Please, note that the lawyers' knowledge of the quality control standards applicable to experts, or at least their knowledge of possible sanctions imposed by law on experts in the case of submitting poor-quality expert reports, is not used to the sufficient extent. On the other hand, it is necessary to bear in mind the complexity of matters that experts deal with therefore it is not possible to rule out occasional negligent errors or omissions. It is up to lawyers to have at least basic knowledge of the problem, which might help to eliminate potential errors or omissions. They can ask for the clarification and elimination of discrepancies (if any) in the conclusions reached in the expert report, or for any additional information as stipulated in Sec 146 of the Code of Criminal Procedure.

I.8. Regulation of experts

Relevant legislation: *Sec. 19 of Act No. 382/2004 on Experts and Expert Evidence*
Sec. 11 and 13 of Regulation No. 490/2004

I.8.1. Experts´ performance is regulated and controlled by the Experts' Institute; the Institute mainly:

a) Organises specialised training courses in the relevant field of expertise; the scope and syllabus of such specialised training courses is determined by the Slovak Ministry of Justice; and

b) Organises continuous education and methodological guidance, and provides consulting services in order to meet the statutory requirement of continuous education, and in order to improve experts´ professional qualification.

I.8.2. In order to supervise experts' education, the Experts' Institute mainly organises seminars in a particular field of expertise as a part of the continuous education scheme. The aim and objective of these seminars is to update and improve experts' knowledge with a view to guaranteeing high quality of their performance. Seminars are always held in the event of any changes in legislation, which directly governs and regulates experts´ services. Depending on circumstances, attendance at seminars may be both mandatory and voluntary.

I.9. Quality assurance standards and best practices

Relevant legislation: *Sec. 19 and 29 of Act No. 382/2004 on Experts and Expert Evidence*
Sec. 11, 13 and 19 et seq. of Regulation No. 490/2004

I.9.1. Quality assurance standards are described in Sections I.5. and I.8. above; for references to individual Sections in applicable legal rules, please, see "Relevant legislation."

I.9.2 Quality assurance standards are implemented and supervised by the Slovak Ministry of Justice and by the Experts' Institute.

I.9.3. Suitable methods of implementing quality assurance standards include seminars, regular testing of professional competence, and the review of experts´ services and procedures in particular criminal matters (including complaints).

I.9.4. The best practice of quality assurance and control is to enable the parties to be present at anytime expert evidence is given and comment on such evidence in the adversary proceeding in a court of law.

II. DISCLOSURE

II.1. Disclosure regime

Relevant legislation: *Sec. 2(6) item b) and Sec. 13 of Act No. 382/2004 on Experts and Expert Evidence*
Sec. 44, 69, 145(1) and Sec. 161, 208, 213 of Act No. 301/2005 (Code of Criminal Procedure

II.1.1. There are two separate disclosure categories: the disclosure regime with respect to evidence gathered in a criminal proceeding applicable to an expert appointed by the police, prosecution or court, and the disclosure regime with respect to evidence used for the preparation of the expert report by the expert instructed by the accused or by the victim at his own cost.

II.1.2. In the case of an expert appointed by the police, prosecution or court, an expert is free to get acquainted with all relevant facts in order to prepare his expert report. The expert shall have full access to the complete case file; if the expert deems it necessary to clarify any facts or circumstances relevant to the preparation of his expert report he may propose supplementary evidence to be furnished (e.g. re-questioning of a witness) or propose any new relevant evidence.

II.1.3. In the above-mentioned case, the police, court and parties are obliged to assist the expert as necessary to facilitate the preparation of the expert report.

II.1.4. The expert shall treat any information learnt in connection with a particular expert report and expert evidence as confidential.

II.1.5. If the expert report is prepared at the expense of the accused or victim, the disclosure regime may also be subject to other provisions of the Code of Criminal Procedure. These include provisions on the right of the accused (or counsel) to inspect the case file and make copies and extracts therefrom; the accused also has the right to re-examine the entire case file after the investigation is over, and to be present (in person or represented by his counsel) in principle at all acts performed during the investigation. Based on information so obtained the expert instructed by the accused or by the victim may prepare his report. Should the expert lack any information

needed to prepare the report, the expert may ask the accused (or counsel) to petition the court or investigator to obtain such information by gathering supplementary evidence. It is up to the defence counsel to provide the expert with all necessary information. The Code of Criminal Procedure provides the counsel with many options for how to do it.

III.2. Controls and oversight of the disclosure regime

Relevant legislation: *Sec. 44, 69, 145, 146, 208 and 213 of Act No. 301/2005 (Code of Criminal Procedure)*

II.2. The prosecution has the entire criminal file at its disposal, based on which it may oversee the entire process of evidence gathering at the pre-trial stage. Once the case is brought to court, legality, completeness and objectivity of the evidence gathering at the pre-trial stage in the event of any discrepancy between evidence gathered at the pre-trial stage and evidence presented in court is dealt with and resolved by court in the context of the adversary system with the parties´ active participation and involvement. The parties may challenge the legality, completeness or objectivity of expert evidence gathered at the pre-trial stage, and ask for explanation of the expert's conclusions or for any further elaboration thereof, or they may request that a new expert opinion be prepared dealing with technical issues.

II.2.2. If the report is prepared by the expert at the expense of the accused or victim, the prosecution and the court undertake to guarantee its legality, objectivity and completeness as a part of the adversary proceeding. Once again, there are a number of means available to control and oversee the disclosure. The police as well as prosecution may disclose information relevant to the defence for the purposes of preparing an expert report by an expert instructed by the accused; such procedures are laid down in detail in the relevant provisions of the Code of Criminal Procedure.

II.2.3. The defence counsel may be present at almost all acts performed at the pre-trial stage; such right is of greatest importance. At the same time, the defence counsel must be provided with the written record and account of such acts. He may as well

inspect the file at the pre-trial stage, make copies and extracts therefrom, and re-examine the file once the pre-trial stage is over.

II.2.4. Should the investigating officer in any way prevent the exercise of such defence rights, the defence counsel may seek the review of steps and measures by the supervising prosecutor. The prosecutor is obliged to deal with such request, eliminate and remedy any error and inform the party, which asked for such review, of the results of his review.

II.2.5 There is the possibility to prepare a so-called "follow-up" expert report, which is in fact a review of the expert report already produced. Such follow-up expert report may be submitted by either party anytime at any stage of the proceedings. Public bodies will submit the so-called follow-up expert reports only if the expert failed to explain inconsistencies or discrepancies in the produced report, or if he failed to provide any necessary additional information.

II.3. How does the disclosure regime fit within the wider criminal procedure and proceedings?

II.3.1. Disclosure of information from the file is strictly governed and regulated by the Code of Criminal Procedure; such regulation applies to the police, prosecution as well as courts at individual stages of criminal proceedings. Speaking in general terms, disclosure of information in a criminal proceeding must be subject to the constitutional principle of "equality of arms," and likewise, the accused's constitutional right to access to justice must be observed in the widest sense. Any hindrance to the access to information to which the defence is entitled would constitute a breach of the accused's constitutional rights, and it might result in frustration of the very purpose of the criminal proceeding.

II.4. Specific criteria applicable to expert evidence

Relevant legislation: *Sec. 2(6) item a), 5, 13 and 17 of Act No. 382/04 on Experts and Expert Evidence*

Sec. 144, 145(1) and 161 of Act No. 301/2005 (Code of Criminal Procedure)

II.4.1. Sec. 17 of the Act on Experts and Expert Evidence beyond any doubt sets out requirements as to the form and content of experts´ reports, which must include the following:

- Cover page (identification details, general description of the evidence being given, reference number of the expert report under which it is registered in the expert's journal, and a brief description of the matter being considered)
- Introduction (statement setting out the summary of all facts and instructions given to the expert which are material to the opinions expressed in the report or on which those opinions are based, and the purpose for which the expert report will be used)
- Opinion (detailed description of the subject of the expert´s examination and the facts which the opinion takes into account; examination, methods and procedures which the expert used in the course of preparing his report; how the expert responded to questions raised by the client and how he performed his tasks)
- Conclusion (questions raised by the client and answers thereto)
- Appendices (to enable the review of the expert report produced if need be)
- Expert's certificate of accuracy (expert´s identification details, field of his expertise in which he is duly licensed to produce reports, and the reference number under which the report is registered in the expert's journal)
- General requirement. There must be an option to review the expert report with a view to verifying its content, methods and procedures through which conclusions were reached.

II.5. Constraints on disclosure or access to evidence upon the prosecution, defence and experts

Relevant legislation: *Sec 69, 145(1), 161 and 213 of Act No. 301/2005 (Code of Criminal Procedure)*

II.5.1. An expert must be able to get acquainted with the contents of the file, particularly with regard to evidence already gathered.

II.5.2. At the pre-trial stage, the investigating officer can deny the right of the accused to inspect the file and other rights pertaining thereto on substantive grounds, mainly if such a course of action on the part of the defence might obstruct or frustrate the purpose of investigation. The prosecutor is obliged to review such denials as soon as possible. If it is the prosecutor who denied the right of the accused to inspect the file, such decision must be reviewed as soon as possible by his supervising prosecutor. The right to inspect the file cannot be denied to the accused, to his counsel and to the victim once they were informed of the possibility to inspect the file.

II.5.3. Speaking in general terms, whenever the accused, his counsel or victim inspects the file, measures must be taken with a view to protecting confidential and privileged information, trade secrets, bank secrets, tax secrets, postal secrets and telecommunications secrets.

II.5.4. If the defence counsel informs the police that he wants to be present at the fact-finding, the results of which may be used as evidence in court, the police are obliged to inform the counsel on time where and how the fact-finding will take place, and describe the fact-finding at issue except for cases in which the fact-finding cannot be delayed and there is no way how to inform the counsel of such contemplated fact-finding. The investigating officer shall make a report on such course of action, which shall become a part of the file.

II.5.5. The expert is obliged to keep any and all information learnt in the course of inspecting the file as strictly confidential.

II.6. Disclosure to third parties and those outside of the jurisdiction

Relevant legislation: *Sec. 69(1), (3) and (4) of Act No. 301/2005 (Code of Criminal Procedure)*

II.6.1. Third parties may inspect the file only with the consent of the presiding judge, and at the pre-trial stage with the consent of the police or prosecution, only provided that it is necessary for the exercise of third-party rights.

II.6.2. Anyone who has the right to be present at the fact-finding may not be denied access to the written record of such fact-finding.

II.6.3. The rights of public bodies to inspect files under separate legal rules are not affected or prejudiced by the above-mentioned paragraphs.

III. PUBLIC AND PRIVATE FUNDING

Basic legal rule: *Regulation of the Slovak Ministry of Justice No. 491/2004 on Fees, Compensations, Costs and Expenses and Lost Time Compensation for Experts, Interpreters and Translators.*

III.1. Availability of public funding for defence, prosecution or court experts

III.1.1. If the police, prosecutor or the court instruct an expert to produce his report in a criminal proceeding, they shall pay all costs of such instruction. The expert´s fee shall be paid from the state-budget funds under an order (resolution) provided that the expert submitted an itemised summary of his services and cost breakdown.

III.1.2. The same applies if the police, prosecution or court instruct the expert to produce his report in a criminal proceeding at the request of the accused (or defence counsel) or the victim.

III.2. Criteria applied to any use of funds by courts, prosecution or the defence

III.2.1. Criteria applicable to the payment of experts' fees and reimbursement of their expenses are set out in generally-binding legal rules, mainly in Regulation No. 491/2004, which sets forth a method of calculating the expert's fee and reimbursement of his costs and expenses in return for expert services provided under

a contract with his client, or based on the instruction of an expert by the court, prosecution or police.

III.3. Any conditions applicable to the provision of funds e.g. limits, guaranteed funding or funding only after an assessment of the work

III.3.1. All of the above-mentioned issues are dealt with by the Regulation of the Slovak Ministry of Justice. Based on this Regulation the expert will calculate his fee and reimbursement of any costs incurred by him in connection with his report; the summary of his fee and eligible costs shall be submitted to the instructing public body, which shall decide whether the expert is entitled to the full fee and reimbursement of his costs, or whether any amount claimed by him will be reduced (which the public body must duly justify). Should the expert disagree with the decision made by the public body as to the amount of his fee and other reimbursements, he may make a complaint that will be investigated, handled and decided by a superior body.

A very specific situation arises when there is a need to instruct an expert by the defence in a legal aid case. There are no public funds available provided by the state from the state budget to cover these expenses.

III.3.2. When an expert was instructed by the defence or by the victim, these parties have to bear all costs of such instruction themselves. It is advisable that the expert and the instructing party sign a contract under which the expert would be paid his fee and reimbursement of other costs incurred in connection with his report as agreed therein. Should such party fail to pay the fee and other costs charged by the expert, the expert may seek the payment thereof by bringing the case to a court of law.

III.3.3. The expert may request a reasonable advance payment to cover his fee and other reimbursable out-of-pocket expenses.

III.4. Guidance linked to funding that controls the appointment/instruction of court, prosecution or defence experts

III.4.1. There is no specific guidance other than that set forth in generally-binding legal rules.

III.5. Can funding bodies independently refuse funding and so deny the use of experts in practice despite court orders?

III.5.1. This is not permitted.

III.6. Awareness of the availability of funding

III.6.1. Such awareness does exist. The parties are aware that if the expert examination is not ordered by court, prosecution or by the police, the party must arrange for the expert report at its own cost. If the accused is acquitted of charges, the state must cover all eligible costs incurred in connection with his defence, including the costs of the expert report.

III.7. Are funding schemes expressly linked with quality control measures of experts?

III.7.1. Principal control of the scope and quality of experts´ services and expert reports is carried out by the same body, which will decide about the expert´s fee in the particular criminal matter.

III.7.2. Should the expert make serious errors, omissions or mistakes of a technical nature, the Slovak Ministry of Justice will deal with such act as a misdemeanour which may result in various forms of discipline having significant financial and other impact, such as:

- Fine or financial penalty imposed on an expert
- Temporary ban on the provision of expert services for a maximum of one year
- Revocation of licence to provide expert services, as a result of which the expert will be removed from the register of qualified experts.

III.8. Private and public sector rates

III.8.1. Rates are the same for the private and public sectors; these are set by the Regulation of the Slovak Ministry of Justice mentioned herein above. However, the expert and the client may also agree on the fee other than the official tariff rate if the expert was instructed by a party other than the public body.

IV. CRIMINAL LAW OF EVIDENCE – ADMISSIBILITY, EXCLUSION AND WEIGHT

IV.1. Criteria and general principles applicable to the admissibility of evidence

IV.1.1. Anything which can contribute to the proper elucidation or clarification of the case may serve as evidence, provided that it was obtained in accordance with applicable legal rules. This therefore includes facts and circumstances gathered as evidence, including but not limited to the expert's report which may be furnished as an evidence in criminal cases which require professional qualification and expertise.

IV.1.2. Parties may also gather evidence at their own expense.

IV.2. Discrete criteria that apply to expert evidence

IV.2.1. The matter to be dealt with by an expert in his report is determined by questions which may not fall outside of his expertise and his competence. The expert is obliged to express his opinion on the matter and if need be, provide additional information based on additional questions. The expert is obliged to respond to the questions raised and, where necessary, also deal with additional technical problems; however, he may not deal with any technical issues which fall into the scope of powers of courts or law enforcement agencies.

IV.2.2. Experts express their opinion only on questions of fact, not on questions of law. An expert may not appraise or assess evidence already rendered or draw any conclusions about the credibility of evidence. Should there be any possibility of different interpretation of the evidence (even contradictory), the expert may not express an opinion that one interpretation is right and the other one is wrong, but he must rather

deal with both alternatives; he must consider all material facts, including those which might detract from his opinion.

IV.3. Distinction between expert reports (including analysis) and expert testimony

IV.3.1. In principle, expert evidence is to be given in a written report. Only exceptionally in simple cases the expert may dictate his opinion to be written down in the record. Instead of questioning the expert, the transcript of his response or written expert opinion may be submitted if there are no circumstances for which the expert might be disqualified, provided that he was duly informed of the importance of an expert opinion and the criminal consequences of any wilful misrepresentation of facts, provided that there are no doubts as to the credibility and completeness of the expert opinion and provided that both the prosecution and the accused agree with such course of action.

IV.4. Procedure by which expert evidence would be admitted as evidence that includes the role of the prosecution and defence and the powers of the court

IV.4.1. An expert opinion does not have any special standing among other evidence. Expert evidence is subject to the general rules applicable to the admissibility of evidence in a criminal proceeding. The law sets out all particulars of the expert instruction process, as well as all relevant particulars of an expert report and the involvement of parties in considering its legality, completeness and objectivity.

IV.4.2. In the case of any ambiguities the expert must be called to clarify the contents of his report with a view to eliminating dissent or doubt. The expert is obliged to make necessary explanations, or provide additional information. If it should not be enough, another expert will be called to put his report in evidence. The expert´s mistake may e.g. be the fact he failed to take into account all facts relevant to the expert report and questions raised, or the fact that the expert relied on untrustworthy information, or the way he examined all available materials does not meet the set technical standards, or the report is insufficiently reasoned, or the expert proves to lack necessary skills, knowledge or expertise to be able to produce the expert report duly and properly in the overall context of his assignment.

IV.4.3. In the context of the adversary proceedings and more intensive involvement of the parties in the evidence gathering a due account must be taken of the fact that in a particular matter each party may submit its own expert report, either in response to reports submitted by law enforcement agencies or by the court, or on their own initiative with a view to supporting their claims, submissions and arguments.

IV.4.4. If the party in such case submits a written report, or instructs an expert to be questioned at the main hearing, the court is obliged to consider whether or not there are reasons to disqualify the expert and whether the expert is duly sworn; the court must also make sure the expert is fully aware of the importance of the expert report and of the criminal liability for any wilful misrepresentation of facts given in evidence. Also, in the case of an expert report put in evidence by either party at the main hearing the same provisions of the Code of Criminal Procedure shall apply as if the expert report were produced by an expert instructed by a law enforcement agency.

IV.5. The weight given to the evidence once admitted to cover the status of the evidence and the court´s obligations of how it should be treated in law and in practice

IV.5.1. The law does not give any *a priori* importance to any evidence, nor does it specify any volume of evidence necessary to prove certain facts or circumstances. Law enforcement agencies and courts exercise their own discretion when appraising and assessing evidence. This does not, however, mean that such assessment is arbitrary. Their discretion must be based on logical reasoning and careful consideration of all evidence gathered and furnished in accordance with applicable legal rules. Likewise, speaking in terms of legality, relevance and credibility of evidence, courts and law enforcement agencies assess and appraise evidence independently of whether the expert was instructed by court, law enforcement agency or by the party.

IV.6. Are there issues in practice for either the prosecution, defence, expert or the judiciary?

IV.6.1. In practice, no major problems arise since the law sufficiently guarantees both to courts and parties the possibility to review and consider legality, completeness and objectivity of expert evidence.

IV.6.2. In the case of any ambiguities the expert must be called to clarify the contents of his report with a view to eliminating dissent or doubt. The expert is obliged to make necessary explanations, or provide additional information. If it should not be enough, another expert will be called to put his report in evidence. The expert´s mistake may e.g. be the fact he failed to take into account all facts relevant to the expert report and questions raised, or the fact that the expert relied on untrustworthy information, or the way he examined all available materials does not meet the set technical standards, or the report is insufficiently reasoned, or the expert proves to lack necessary skills, knowledge or expertise to be able to produce the expert report duly and properly in the overall context of his assignment.

IV.7. Procedures and criteria for the exclusion of evidence

IV.7.1. Evidence gathered illegally or improperly (under coercion, threat, etc.) may not be put as evidence in court except if it is used against the person who improperly used his power to compel another to submit such evidence.

IV.7.2. In the event of any breach or violation of law in the course of obtaining or producing evidence, such evidence may not be put in court.

V. MUTUAL LEGAL ASSISTANCE AND MUTUAL ASSISTANCE

V.1. International obligations of MLA that are implemented in the jurisdiction

V.1.1. The term “mutual legal assistance” (MLA) is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country based on a request made by competent authorities.

V.1.2. As laid down in the Code of Criminal Procedure, MLA is permitted on a reciprocal basis as well as on the basis of a treaty. It is not necessary to transpose duties and obligations binding on the Slovak Republic as they arise under international treaties into national legislation, because the international treaty binding on the Slovak Republic takes precedence over national law.

V.1.3. The term "mutual assistance" (MA) is not defined in Slovak law. It may mean all other areas of international cooperation, the results of which cannot automatically be used as evidence in a criminal proceeding (police cooperation, customs cooperation, etc.).

V. 2. MLA procedure and any alternative MA procedures of communication and transmission

V.2.1. A letter of request for MLA must (in addition to an exact and accurate specification of the legal assistance requested) include the following details: summary of the facts of the offence(s) and details of the offence(s) committed or alleged; relevant provisions of the applicable legal rules with respect to the offence(s) committed or alleged; full name(s) of the subject(s) of the investigation or proceedings if known (the accused or the victim or witness) if they are to be heard; and other information to the extent necessary for a due provision of the assistance requested. The letter of request must also include the details of the authority seeking such assistance, case file number and date, and must be duly certified by the signature of a responsible official(s), and must also bear the round seal of such authority. Documents must be submitted with a translation (by a certified (sworn) translator) if the translation is required in the context of the countries´ mutual agreements, covenants and arrangements.

V.2.2. "Police cooperation" is defined within the framework of the cross-border cooperation provided on the basis of a treaty. However, its aim and objective is not to gather procedural evidence but rather an exchange of information. In cases where this information should be put as evidence in court, a request for legal assistance must be made.

V.3. Access to MLA procedures or MA procedures by the prosecution and the defence

V.3.1. As far as the service of procedural documents is concerned, if any procedural evidence in a criminal matter is to be admissible as an evidence in court, MLA procedures must be followed; an expert evidence may be called in the same way as any other information in a letter of request for legal assistance. Requests of Slovak authorities at the pre-trial stage are sent abroad via the General Public Prosecution Service of the Slovak Republic, and requests of courts are sent via the Slovak Ministry of Justice, though it is also possible to use diplomatic channels. Insofar as international treaty so provides, requests for legal assistance may be sent abroad by other means (direct transmission without the involvement of Central Authorities to Austria, the Czech Republic, Hungary and Poland based on bilateral treaties, or to the EU Member States under the 2000 MLA). An investigating officer (police officer) may only serve a request for legal assistance abroad via the Public Prosecution Service.

V.3.2. Prior to bringing a formal written accusation (indictment), a law enforcement agency or the defence may propose to the prosecutor that evidence be obtained abroad via MLA. At this stage of the proceeding, request for legal assistance may only be made by the prosecutor, and it is up to him to decide whether or not he will do so. Once the charges are brought, any such request for legal assistance may only be made by court upon proposal put forward by the parties.

V.4. Requirements and authorisations required by parties to make a request

V.4.1. Slovak authorities handle requests for legal assistance sought by foreign authorities as laid down in the Code of Criminal Procedure or in the international treaty. If legal assistance is being provided according to an international treaty via a procedure not laid down in the Code of Criminal Procedure, the prosecutor shall determine how legal assistance will be actually provided. Unless otherwise agreed in the international treaty binding on the Slovak Republic, a request for legal assistance from a foreign authority is sent to the Slovak Ministry of Justice, but the body

actually handling such a request will be the appropriate District Public Prosecution Service within whose ambit the requested legal assistance is to be provided.

V.4.2. Expert evidence in the context of MA under the Code of Criminal Procedure is out of question. All acts in a criminal proceeding involving any foreign country, insofar as they are to produce evidence admissible at trial, must be performed within the MLA framework. This applies accordingly to expert evidence.

V. 5. Judicial oversight, safeguards and conditions that can be attached to the recognition, execution and transmission of request

V.5.1. Courts oversee the MLA procedures as follows: within the framework of a criminal proceeding at the evidence-gathering stage before the court, the court considers the admissibility of the evidence gathered. If the court comes to a conclusion that the evidence is inadmissible, it will not take it into account. Insofar as the nature of the act permits, the court may refer the matter back via MLA in order to obtain admissible evidence.

V. 6. Process and issues in the recognition and execution of a request

V.6.1. If a foreign authority requests a court to perform an act of legal assistance in order to make sure the results thereof will be admissible in a criminal proceeding in the requesting state, the prosecutor shall forward the foreign authority´s request to the appropriate District Court within whose ambit the requested legal assistance is to be provided. If legal assistance is to be provided solely by court, the Slovak Ministry of Justice will forward the request directly to the appropriate court.

V.6.2. General provisions of the Code of Criminal Procedure, which set out the guidelines for instructing an expert and preparing expert reports, apply to the process of gathering expert evidence within the MLA framework.

V.7. Process and issues around the transmission of requested material

V.7.1. Recognition and execution of the request includes the documentation related to specific procedural acts which are to be performed according to the Slovak Code of Criminal Procedure. Written records of the procedural acts constitute a part of the file connected with the handling of the request.

Conclusion:

The importance of issues related to the access to experts, expert evidence and the legislation applicable to expert services is underlined by the duty of the state to guarantee each and every individual´s constitutional right to the judicial and other legal protection laid down in Article 46(1) of the Slovak Constitution with possible modification in Article 51(1) of the Slovak Constitution. Moreover, the underlying philosophy of expert services is the right to the fair trial guaranteed to each and every individual in the context of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Doc. JUDr. Jozef Olej, CSc.
Chairman, National Project Task Force

Institutions consulted at the consultation stage:

- Slovak Ministry of Justice, Criminal Legislation Department
- Comenius University, Faculty of Law, Bratislava, Criminal Law Department
- University of Pavol Jozef Šafárik, Košice, Criminal Law Department
- Police Corps Academy, Bratislava
- Slovak Ministry of Interior, Investigation Unit
- General Public Prosecution Service

The above-mentioned institutions raised no material objections to the Initial Report. In their opinion, the Initial Report was well-structured and comprehensively covered all issues relevant to expert evidence.

Recommendations for practical and legislative changes:

Mr. Olej, Head of the Slovak Task Force, co-operates with the Criminal Law Reform Group working under the Slovak Ministry of Justice. He is also the head of the Criminal Law Committee working under the Slovak Bar Association. In this capacity, he is able to liaise between the two organisations, and put forward proposals to the Criminal Law Reform Group, mainly in terms of the Slovak Criminal Procedure Code.

Main problem:
Reimbursement of costs incurred in connection with the preparation of expert evidence

When an expert is instructed by the defence or by the victim, these parties have to bear all costs themselves. A very specific situation arises when there is a need to instruct an expert by the defence in a legal aid case. There are no public funds available from the state to cover these expenses. Therefore the Slovak Bar Association will propose (as an outcome of this project) appropriate legislative changes in the Slovak Code of Criminal Procedure.

Expected Results:

In a legal aid case, the defence counsel will be provided with funds from the state budget as an **advance payment** to cover the costs of necessary expert evidence being prepared.

Practical Issues:

One of members of the Slovak Task Force is the Director of the Slovak Expert and Forensic Institute, which has great experience with expert evidence. The Institute is in charge of methodology and proper practice procedures. Moreover, other members of the Slovak Task Force were the representatives of judiciary and prosecution, and in their respective capacity they will be able to implement outcomes of the project both at the pre-trial and trial stage.

Training Materials:

1. The Slovak Bar Association organises seminars for trainee lawyers. As far as the training scheme is concerned, trainees are divided into three groups (anyone who wants to sit for the Bar Examination, must have practised law as a trainee lawyer under the supervision of a lawyer duly admitted to the Bar for **three years)**. Each seminar focuses on a particular topic. Having regard to the outcomes of the AGIS Project, the issue of expert evidence will be incorporated into the syllabus of seminars to a greater extent. The Slovak Bar has been considering an idea to organize one seminar focused solely on expert evidence issues. In October 2008, the Slovak Bar organized a very successful conference in cooperation with the European Criminal Bar Association. One of topics on the agenda was legal aid, the problem partly linked to expert evidence and financial impact on the parties.

2. Moreover, the Slovak Bar Association organises seminars for its lawyers in individual regions within Slovakia. On 27 November 2008, we already held a seminar in Bratislava (with 50 participants) on expert evidence. One of the speakers was a member of the Slovak Task Force who informed the audience of the London Conference in September 2008 and its outcomes. We intend to continue with this initiative due to a number of changes in the criminal legislation currently applicable in Slovakia.

3. The Slovak Bar Association publishes a journal on the regular monthly basis "Bulletin of Slovak Advocacy." We will summarise outcomes of the AGIS Project and publish a short analysis in the Bulletin.

The Slovak Bar in co-operation with the Law Society of England and Wales might consider the idea of translating the whole summary made by the Law Society (or at least some parts of special importance for Slovak lawyers) with a view to providing Slovak lawyers with information about this Project and a comparative analysis. However, in order to do that, additional funding under the AGIS Project financial scheme would be required as the Slovak Bar has not allocated any funds to this initiative.

EXECUTIVE SUMMARY OF ACTION PLANS:

- Expert evidence as an integral part of the continuous education scheme both for Slovak lawyers and trainees at the national and regional level

- Legislative initiative: expert evidence in legal aid cases and reimbursement of costs incurred in connection therewith

- Publication of results of the AGIS Project in the Bulletin of Slovak Advocacy.

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