

Influences on Code of Civil Procedure upon Accounting Expertise

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DOI Link: <http://dx.doi.org/10.6007/IJARBSS/v4-i5/852>

Published Date: 16 May 2014

Abstract

Accounting expertise reports are drawn up by professionals who are legally authorised to retrace a given economic and/or financial operation, based on their analyses of documents, data and information provided by accounting records. In Romania, these professionals are represented by active accounting experts belonging to the Body of Expert and Licensed Accountants of Romania (CECCAR).

In 2009 the Law no. 178/2009 brought about several changes in drawing up judicial accounting expertise reports, in particular in that which concerns submitting the expertise report and settling the expenses incurred by conducting the expertise; that is why the hereby paper attempts to describe such changes, as compared to the previous legal provisions, so that the paper may be truly helpful to professionals of this field, as well as to clients who request judicial accounting expertise reports.

Through Law no. 76/2012 implementing Law no. 134/2010 regarding the Code of Civil Procedure were brought many changes to the judicial accounting expertise.

Also, the paper describes the procedure for ordering a judicial accounting expertise as well as the procedures for reimbursing the expenses generated when conducting this type of works.

Key words: Judicial Accounting Expertise, Expertise Report, Jurisdictional Bodies, Local Office, Fee.

JEL Classification: K, M

Introduction

The paper aims to discuss the main legal provisions governing the way a judicial accounting expertise is conducted, the procedure for ordering the expertise and for drawing up and submitting the expertise report, as well as for settling the fee and all other expenses incurred by conducting the judicial accounting expertise.

When writing this paper I made use of the existing regulations in this field, in particular the CECCAR professional norm no. 35, as well as the legal provisions of the Government Order no. 2/2000 and of the Law no. 178/2009, which brought several amendments in that which concerns conducting a judicial accounting expertise.

The provisions of Law no. 76/2012 implementing Law no. 134/2010 on the Code of Civil Procedure were also taken into account, both those with direct impact on the old provisions of the Code of Civil Procedure, as well as those that are not directly related to judicial accounting expertise but which ought to be known by expert auditors, which may influence their activity.

1. The Framework Of Accounting Expertise Reports

The basic activity of accounting experts is that of drawing-up accounting expertise reports, requested by legal bodies or physical persons or legal entities in compliance with the law, such as: amiable expertise reports (by request), judicial expertise reports for civil cases, criminal cases, or labour law cases, management expertise reports, financial and accounting expertise reports, etc.

The means for ensuring professional regulation for the activity of conducting expertises were established by the CECCAR through the Norm and notes of the delegation concerning accounting expertise. According to the professional CECCAR norms, the accounting expertise report is a substantiation tool used in solving certain cases that require strictly specialized knowledge from people who are trained as accounting experts.

The judicial accounting expertise – is regulated through the Code of civil procedure, the Code of criminal procedure and other special laws. Accounting expertise reports are used as evidence in court cases. They can be submitted ex officio or they may be accepted at any stage of the trial, upon request from the parties involved.

The main purpose of judicial accounting expertise reports is to contribute to establishing the factual truth and the correct solving of litigations or cases undergoing investigation or trial.

The conclusions of the expertise report cannot be taken for granted automatically by the legal body that has requested or accepted this report. The legal body must freely assess the substantiating power of the accounting expertise report based on its conscience and the existing laws; consequently, the conclusions of the expertise may be accepted or rejected depending on its scientific level, its quality and the degree to which it fits together with the rest of the evidence submitted in the case that is undergoing investigation or trial.

Judicial and extra-judicial accounting expertises are regulated through the following:

- **legal norms** – the core of the existing legal regulations on judicial and extra-judicial accounting expertises stands in the Government Order no. 65/1994 on organizing the activity of accounting expertise and licensed accountants; according to this law, conducting judicial and non-judicial accounting expertises is the exclusive right of accounting experts, who have legally acquired the status of accounting experts as per the provisions of the G.O. no. 65/1994; they draw up accounting expertise reports upon request from legal bodies, physical persons or legal entities, according to the law. Accounting experts may practice their profession either individually or within trading companies, according to the law. Judicial and extra-judicial accounting expertises cannot be conducted by licensed accountants, whether high-school graduates or university graduates, or by other kinds of professionals; the reports drawn up by such categories may be named Accounting expertise reports and they are compliant with the relevant methodology, but they are merely considered specialized reports, and are not deemed accounting expertise reports from a legal point of view;

- **procedural norms** – the core of procedural regulations on choosing and appointing

accounting experts, as well as on the procedure for conducting accounting expertises, in particular judicial ones, lays in the Code of civil and criminal procedure. They do not regulate accounting expertises in particular; the procedural regulations with regards to expertise, to the extent to which they do not refer to other types of expertise (coroner's expertise, graphological expertise, etc.), are also applicable to judicial accounting expertises. The segment of common law that deals with expertises as means of legal substantiation is the Code of civil procedure; to set clear certain factual circumstances, the court may ask for an expert opinion, with such experts being appointed either ex officio or upon request from the parties; a Ruling is issued to establish the aspects that will be the object of the expertise and the deadline for conducting the expertise; the deadline is established so as to ensure that the expert submits his report at least 5 days prior to the date established for the hearing in court; if the parties fail to agree on appointing the experts, the latter are appointed by court, through random selection during a public meeting, out of a list drawn up by the legal expertise office; again, the ruling is the document that establishes the payments for these experts. The Code of civil procedure also includes procedural regulations opposable to the judicial accounting expertise, used in criminal trials;

- **professional norms** – the core of professional regulations on judicial and extra-judicial accounting expertises stands in:

a) **The Organizational and Operational Rules of the Body of Expert and Licensed Accounts of Romania** – which provides that accounting experts, when practicing their profession, are authorised to conduct accounting expertises ordered by legal bodies or requested by physical or legal persons, such as : amiable expertises (by request), financial and accounting expertises, arbitration in civil cases or management expertises;

b) The **CECCAR professional norm no. 35 on accounting expertises** which provides that expertises may be conducted only by professionals who have acquired the status of accounting experts as per the legal provisions and who are registered in the Record of the Body of Expert and Licensed Accountants of Romania, meaning that they have been dully re-authorised.

c) The CECCAR norm no. 1044/2010 on improving judicial accouting expertise was approved by the Board of Governors of CECCAR no. 10/200 of 21.07.20210 as amended and it regulates the organization and functioning of the Judicial Experts Group. (GEJ)

2. THE PROCEDURE FOR ORDERING JUDICIAL ACCOUNTING EXPERTISES

Judicial accounting expertises are requested by **the bodies that investigate the cases submitted to criminal trials**: the Police Department, Prosecutor's Office, court houses for civil or criminal cases, and the defendants or other parties involved in the trial; that is why the accounting expert must submit, for the case, a set of expertise reports, so that each party involved in the trial may receive a copy.

Ordering judicial accounting expertises is the exclusive right of bodies entitled by the law to submit the evidence of the expertise. The expert can only be appointed by the body legally entitled to request the submission of the expertise as evidence.

a) contacting and appointing accounting experts in civil cases

Article 325 of the Code of civil procedure provides that: "If parties do not bargain on the appointment of experts, they will be appointed by the court, by lot from the list drawn up

and communicated by the local office of expertise, including those entered in the records and authorized by law to perform expertise records. The closing of appointing expert will set the goals on which he is to decide, the time in which the expertise must be made, expert provisional fee and, if applicable, advance payment for travel expenses.” As it follows from this, the civil procedure allows the parties to contact the accounting experts directly, and may propose their appointment to the court.

Regardless of whether the parties in the civil cases reach an agreement or not in that which concerns the name of an expert (or several), his actual appointment (or their appointment) is made through a **meeting act** that must include at least the following paragraphs:

- (1) a paragraph that presents the name of the accounting expert or experts, appointed ex officio and/or upon request from the parties;
- (2) a paragraph that describes the aims (the questions) that the accounting expert or experts must answer to;
- (3) a paragraph that establishes the deadline (date) for submitting the accounting expertise report;
- (4) the fee (pay) established for the accounting expert or experts; this is usually established after the court has discussed the issue with the parties involved.

If any of these paragraphs is missing in the meeting act, the accounting expert is not only entitled, but also obliged by his professionalism to request from the court to include the missing paragraphs in the meeting act.

b) contacting and appointing accounting experts in criminal cases

The right of **appointing** the accounting expert belongs to the criminal prosecution agent or to the court house, but each of the parties may request that an accounting expert recommended by that party is allowed to participate in conducting the accounting expertise. In criminal cases, the presence of the accounting expert, on the date of his appointment, is compulsory. The criminal prosecution agent or the court house, when deciding on an expertise, establishes a date for hearing both the parties and the accounting expert, if the latter was chosen either by the criminal prosecution agent or by the courthouse.

At the established date, both the parties and the chosen accounting expert are informed on the aim of the expertise and notified that they have the right to make comments with regards to these questions and request that they be modified or completed.

The parties are also informed that they have the right to request that an accounting expert be appointed for each, based on their individual recommendations, and that he be granted the right to participate at the expertise.

After examining the objections and requests brought forward by the expert, the criminal prosecution agent or the court house informs the expert on the deadline for completing the expertise report and notifies him whether the parties will also participate in conducting the expertise.

The procedural document for appointing the accounting expert or experts is the **order** issued by the criminal prosecution agent or the Prosecutor’s Offices belonging to the court houses; such orders include a device that nominates the people involved and the charges being investigated, plus at least four other paragraphs:

- (1) the name of the appointed accounting expert or experts;
- (2) the aims (questions) of the accounting expertise;
- (3) the deadline (date) for submitting the accounting expertise report;

(4) the fee (payment) for the accounting expert or experts.

The aims (questions) that the appointed accounting expert or experts must address need to be concise, unequivocal, and mustn't request a legal classification for the facts undergoing trial. This applies to all types of expertise reports, whether submitted for civil cases or criminal cases.

The deadline (period) for conducting the expertise and establishing the date for the submission of the judicial accounting expertise report. The legal body that requests that an accounting expertise be conducted must also establish, through a Meeting act (when dealing with civil cases) and through an Order (when dealing with criminal cases), the deadline (duration) for conducting the accounting expertise and the date for submitting the accounting expertise report.

The deadline for conducting the judicial accounting expertise is negotiated between the legal body that requested the expertise and the appointed accounting expert and depends on the expert's professionalism.

The payment for accounting experts must have a remunerative character. The legal body that requests the accounting expertise and appoints the accounting expert must also establish his payment. The principles on the subject are found in article 325 of the Code of Civil procedure, according to which "The proof of the fee payment is to be lodged at the Registry of the court by the party who is bound by the agreement within five days from the appointment or the date set by the court.

The Body of Expert and Licensed Accountants of Romania has issued the "Rules on the discipline of fees and benefits and criteria for the reimbursement of expenses for the professional performances of accounting experts and licensed accountants" and it approved the "Professional Fees" – through the Decision of the National Conference of 2001. According to article 2 of this "Professional Fees" document, in exchange for the activity he conducts for his client, the accounting expert is entitled to compensations for:

- a) reimbursing the expenses incurred by travelling and accommodation;
- b) indemnities,
- c) fees.

This excerpt from the "Professional Fees" is applicable regardless of whether the accounting expert is appointed ex officio or upon recommendation from the parties involved in the trial. If the legal body and/or parties involved in the trial refuse to accept these fees, the accounting expert is entitled to refuse to conduct the judicial accounting expertise. Complying with the "Professional Fees" is a must for the accounting expert.

Failure to comply with these obligations imposed by the CECCAR may incur disciplinary sanctions from the CECCAR or even criminal sanctions for unfair competition (if the expert works for excessively low fees) or for bribe (if the expert works for excessively high fees). Article 333 of the Code of civil procedure mentions that: "When experts ask or receive an amount greater than the fee fixed by the court is punishable under criminal law. If there is a motivated request coming from the experts, taking into account the work performed, the court may increase their due fees through enforceable closing, with the summoning of the parties, but only after submitting the report, the response to possible objects or additional report , as applicable "

When talking about accounting expertise in criminal cases, the Ministry of Interior and Administration through the General Inspectorate of Romanian Police settled the

procedure referring to technical expertise discount and accounting records present in criminal causes, which aims to establish a uniform set of rules regarding the settlement of consideration of accounting and technical expertise in criminal cases by the investigation bodies of the judicial police within the Romanian Police, as well as the establishment of responsibilities regarding the preparation, notice and approval of documents related to the settling of consideration regarding the accounting and technical expertise and bodies arranged in criminal cases by the investigation bodies of the Romanian Police .

If, in a given instance, the aims (questions) expressed by the legal body are of a different kind, respectively justified opinions and consultancy, assessment of goods and rights, company assessments, assessments for departments and patrimonies, etc., the accounting expert is entitled to request that the professional fees be summed up.

In the case of **judicial accounting expertise reports**, both accounting experts appointed ex officio and those appointed upon recommendation from the parties must submit the accounting expertise report at the legal body that ordered the accounting expertise, where all those who are interested in it, including the parties involved in the trial, may have access to it. This explicitly results from the provisions of article 122, paragraph 3, of the Code of criminal procedure, according to which: "The expertise report must be submitted at the criminal prosecution agent or the court house that ordered the expertise". But the Code of civil procedure also (article 330, paragraph 1) provides that: "The motivated findings and conclusions of the expert or laboratory or specialized institute of the requested expertise will be recorded in a written report that will be submitted at least 10 days before the time fixed for trial. In urgent cases the deadline for filing the expert report can be reduced."

As it follows from this, the accounting expertise report must be submitted to the court house that requested it, respectively added to the case file. The purpose of this procedure is to avoid that the contents and conclusions of the judicial accounting expertise report be communicated (notified) preferentially to some of its users.

3. LEGAL PROVISIONS ON JUDICIAL ACCOUNTING EXPERTISE REPORTS

The Government Order no. 2/2000 on organizing the activity of judicial and extra-judicial technical expertise [16] includes several provisions concerning the status of judicial technical expert, procedural rules on the judicial technical expertise, organizing the activity of extra-judicial technical expertise, as well as the attributions of the Central office for judicial technical expertises and of the local offices for judicial technical and accounting expertises.

The provisions of article 15-23 of the G.O. no. 2/2000 also apply to the judicial accounting expertise.

According to these provisions, if the expert must travel to another place than that of his domicile, in order to conduct the expertise, he is entitled to having reimbursed the expensed incurred by travelling and accommodation and also to payment of a daily allowance as per the norms regulating these rights for employees of public institutions.

The amount established as temporary fee and the advance payment for travelling expenses, whenever that is the case, must be submitted within 5 days of the appointment of the expert by the party who was allowed to request expertise, in the special account of the local office for technical and accounting expertises, opened up to that purpose.

The expertise reports, along with a fee assessment note and list of reimbursement payments for travelling, accommodation, daily allowance and other expenses incurred by the

expertise, if that is the case, **must be submitted at the local office for judicial technical and accounting expertises, in order to be sent to the body that requested the expertise.**

The final fee is established by the body that ordered the expertise, depending on the complexity of the report, the amount of work performed and the professional or scientific degree of the expert or specialist.

The local office for judicial technical and accounting expertises **ensures the delivery of the expertise reports and lists of reimbursements** for the payments incurred by conducting the judicial expertise, **it verifies and endorses the list of reimbursements** that, **along with the expertise reports, it forwards to the bodies that requested the judicial expertise.**

The payment of the fee and reimbursement of other expenses, whenever that is the case, due for the expert or specialist, **are to be made exclusively through the local office for judicial technical and accounting expertises.**

The **Law no. 178/2009** for modifying and completing the Government Order no. 2/2000 on organizing the activity of judicial and extra-judicial technical expertise [14] brought forth several changes, some of which concern the judicial accounting expertise, and they are as follows:

- a) **The expertise report along with the fee assessment note and list of reimbursement payment** for travelling, accommodation, daily allowances or other expenses incurred by conducting the expertise, if there are any, **must be submitted to the relevant jurisdictional body that authorised the expertise;**
- b) **After establishing the final fee**, as well as, if required, the amount of travelling and accommodation expenses, daily allowance or other expenses incurred by the expertise, **the jurisdictional body notifies the local office of expertise to proceed with the payment;**
- c) **The local office** for judicial technical and accounting expertises pays the due fees to the judicial technical experts, specialists, and accounting experts, as well as the amounts representing travelling and accommodation expenses, daily allowances or other expenses incurred by the expertise, after their total amount is communicated by the jurisdictional body that authorised the expertise.

Conclusions

The changes presented in this paper were aimed at simplifying the procedures for submitting judicial accounting expertise reports and receiving reimbursements for the expenses incurred by them, with the main role being assigned to the jurisdictional body that authorised the expertise.

The nominal list of judicial experts, with their identification data, and classified by specialization, (including that of accounting expertise), and by district, respectively the capital, Bucharest, organized by address of domicile, is published on the web site of the Ministry of Justice and Citizenship Freedoms (www.just.ro), so that any physical person or legal entities may have access to this list and contact directly the accounting expert whose professional services he wishes to engage.

Ministry of Justice approved the technical expertise judicial specializations set out in the Annex to the Order of MJ No. 199/2010, published in Official Gazette no. 78/2010,

bringing modification to the names of specialization, in all cases where it is used the previous name of a specialization so as to understand the new name of specialization, as amended by the mentioned order.

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