Civil, Criminal and Disciplinary Liability of Expert Witnesses According to Turkish Law

by DR. HON. MUSTAFA SALDIRIM

ABSTRACT

Expert witnesses hold a key position in the Turkish legal system. They assist courts in relation to technical and professional issues which are not within the knowledge of judges. Expert witnesses give guidance to courts not only in civil law matters, but also in administrative and criminal cases. Due to their weight in adjudication, the lawmaker has issued Expert Witness Law numbered 6754 on 24 November 2016 which aims to regulate the profession by complementing the existing rules in Turkish Civil Procedure and Turkish Criminal Procedure Law. Expert witnesses are regarded as public officials and therefore any negligence on their part should be treated and compensated as the negligence of a public agent. This essay explores the position of Expert Witnesses in the Turkish judicial system, the novelties brought by the Expert Witness Law and the civil, criminal and disciplinary liabilities of expert witness according to Turkish law.

I. INTRODUCTION

We have entered a period in which implementation of amendments to fundamental laws are underway. Civil Procedure Code (CPC) numbered 6100 entered into force on 1 October 2011, Turkish Code of Obligations (TCO) numbered 6098 entered into effect on 1 July 2012 and Turkish Commercial Code (TCC) numbered 6102 entered into effect on 1 July 2012 have potential to affect legal practitioners as well as a significant segment of society. Even though these fundamental laws were not drafted with a radical approach, completely ignoring the former accumulation of practice and knowledge, they nevertheless bring significant novelties and amendments.

Expert witness examination, which is one of the most important steps of trial, as well as expert evidence and witnesses were also inevitably affected by these significant changes introduced in the field of private law.

In Part Five of Section Four of the CPC, expert witness examination is regulated. Provisions regarding confidentiality obligation and powers of expert are novel. Also, it has been accepted that experts shall be appointed from among persons in the lists to be made every year by Civil Justice Commissions of Regional Justice Courts, making a regulation parallel with Criminal Procedure Code's (CPRC) provisions regarding the profession of expert witness. The goal is to have a pool of expert witnesses consisting

* Dr. Hon. Mustafa Saldırım is Deputy Secretary General at the Court of Cassation of the Republic of Turkey.
of specialists. Other features of the amendments are to have expert witnesses’ opinion sought only where necessary, not on judgment of purely legal matters, and that expert witnesses’ work should be subject to closer audit. In addition to these, it is now clearly stated that experts are deemed as public officials within the meaning of Turkish Criminal Code (TCRC).

Another novelty which constitutes the main subject matter of this study is that those who incurred damages because of expert witness reports prepared contrary to the facts can file lawsuits. The fact that CPC clearly indicates expert witnesses as public officers also appears to bear direct consequences in terms of TCRC.

This study comprises of four parts. In the first part, there will be explanations especially regarding concept of experts within the scope of CPC to provide a theoretical basis to explanations in the subsequent three parts. In the second part, the civil liability of expert witnesses will be examined by considering the provisions of TCO. In the third part, criminal liability of experts will be explained. In the fourth and final part, disciplinary liability of the experts will be analysed.

II. GENERAL INFORMATION ON EXPERT WITNESSES AND LEGAL CHARACTERISTICS OF EXPERT WITNESSES

a) General Information on Expert Witnesses

Courts can decide to receive opinion and vote of an expert witness, either ex officio or upon request of one of the parties, whereby special or technical information is needed. On subjects that can be adjudicated through general and legal knowledge of judges, opinion of an expert witness cannot be obtained (CPC Art. 266).1

The institution of expert evidence is established to assist the court in respect of court’s requirement of special and technical information.2 This rule is without exception and it is stated in the preamble of the article that the opinion of an expert witness cannot be received even for fields of law that require expertise and that this is a principle dictated by the Constitution (C).3

On the other hand, the first sentence reiterates the aforementioned principle by stating that expert evidence cannot be received on subject matters that can be solved

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1 Responds Article 266 of the Former Civil Procedure Code numbered 1086 (FCPC), ‘Court decides to receive the opinion of expert witness circumstances requiring special or technical information. Expert witnesses’ opinion cannot be heard on matters that can be solved with general and legal information that is expected of the judge’s office.

2 Court of Cassation’s General Assembly of Criminal Chambers’ Decision dated 28 April 1998, file number E.1998/8-68, decision number K. 1998/143: ‘On the other hand, judge may apply to expert on subject matters that require expertise. Expert Witness is the person from whom expertise is sought. Duty of the expert witness is assisting the court on its area of expertise. It is contrary to Article 66 of Criminal Procedure Law (CPRC) to apply to expert witness on subject matters which do not require expertise and can be solved with legal knowledge, culture and experience of judge or prosecutor. The expert witness is obliged to apply his professional and technical knowledge to the case at hand and to assess the matter from a scientific perspective. No legal function can be attributed to him/her beyond this. Even if the expert witness on his/her own initiative went beyond such limits, the judge shall not be bound. It is the judge’s duty to discuss and decide whether the determined material fact constitutes a crime pursuant to criteria in norm of law.’

3 Turkish Constitution Law No: 2709, Entry into force: 7 November 1982.
only with general and legal knowledge of the judges (C. Art. 138; CCP Art. 33; Former Civil Procedure Code numbered 1086 (FCPC) art. 76; International Private and Procedure Law numbered 5718 (IPPL) Art. 2). The lawmaker once again emphasised its approach with the Article 279, IV of CPC. Within the framework of these explanations, expert witness is required not to examine legal dimension of disputes but to examine special and technical sides of material facts which constitutes subject matter of disputes and to render an opinion by staying within these boundaries.4

Expert witnesses take charge not only in civil trials but also in criminal trials5 and administrative cases6 and Court of Accounts7 investigations. When it is necessary for clarification of the dispute, the judge may request explanation or evidence from parties or ask questions to the parties, as to the matters that he considers ambiguous or inconsistent from factual or legal aspects (CPC Art. 31). While it is an obligation for the judge to resort to expert witness, the parties may also request expert witness involvement when deemed necessary and useful for deciding the case.

Finalisation of trial within a reasonable duration is an element of the right to fair trial.8 As per the Constitution, ‘It is judiciary’s duty to finalize lawsuits with minimum expenses and reasonable speed.’9 It is also the duty of the judge to proceed the trial in an orderly manner and to prevent making unnecessary expenses. As per Article 30 of the CPC, ‘(the) Judge is obliged to ensure that trial be carried out in an orderly manner and within a reasonable duration and that unnecessary expenses are not made.’10 For

4 Article 270 of the Preamble of the Governmental Draft which is corresponding to Article 266 of the CPC: ‘...a tendency where legal information with respect to specific areas of the law are considered within the scope of the concept of special information has been observed. Special information in article 270 needs to be clearly emphasized as ‘excluding the field of law’. Technical information means information which is sufficient to implement the data of positive science such as physics, chemistry, math. Again, technical standards which go beyond a specific enterprise volume, which are settled and determined by authorized persons, institutions and boards fall within the concept of technical information.’

5 According to Article 63 of the CPRC, ‘Receiving the expert witness’ opinion in cases of which resolution requires expertise, special or technical information shall be decided ex officio or upon the request of the public prosecutor, intervener, attorney of the intervener, suspect or accused, defence attorney or legal representative of them.’

6 According to Article 31 of the Administrative Procedural Law numbered 2577, ‘in cases where there is no provision in this law, provisions of CPC shall apply to challenges to appointment of judges, legal capacity, intervention of third parties to the case, notification of the case, attorneys of the parties, waiver and acceptance, deposit, counter claim, expert witness, view, determination of the evidence, legal fees, judicial assistance or to motions against the actions of third parties which causes disorder in court. (Addition c. 05/04/1990 – 3622/11 m.; amendment c. 10/06/1994 – 4001/14 m.) However, notification of the case and the election of the expert witness is made ex officio by Council of State, by court or by judge. – 2 as per this law and the article above, in settlements of tax disputes, provisions of Tax Procedural Law shall apply, provided that situations referred in the Civil Procedural Law are reserved.’

7 According to Article 6, III of the Law on Court of Accounts, ‘The Court of Accounts is authorized to examine the records, goods and products, works, activities and services of the public administrations that fall within the audit of itself through its members to be assigned or expert witnesses on site and during every stage. The legal position, power and responsibility of the expert witness is subjected to general provisions.’


9 Constitution (1982), Art. 141, Sec. 4.

10 According to Article 77 of the FCPC, ‘The judge is obliged to conduct his examination and to pay attention to the trial being carried out speedily, in orderly fashion and avoiding unnecessary expenditure.’
this reason, appointment, quality, the legitimacy of the opinion and vote of the expert witness are also considerations for the trial to be carried out within a reasonable time and in an orderly manner and to prevent making unnecessary expenses.

b) Legal Characteristics of the Expert Witness

According to Article 284 of the CPC, ‘Expert witness is a public official within the meaning of TCRC.’ In the preamble of the article it is stated that ‘...the matter that expert witnesses are public officials within the meaning of TCRC is expressed in a clear and definite manner’\(^{11}\). There is the possibility that an interpretation can be made from the text and preamble of the article that the expert witness is a public official only with regards to implementation of the TCRC and cannot be considered as a public official in terms of other fields of law.

The heading of Article 284 of the CPC which reads as ‘Expert witness’s situation in terms of criminal law’ supports this interpretation. In other respects, public official is defined in Article 6 of TCRC as ‘Person who constantly, periodically or temporarily engages in carrying out public oriented activities by being appointed, elected or any other way whatsoever’. Without any doubt, trial is a public oriented activity and expert witnesses temporarily participate in these activities. For this reason, even if there was no provision in Article 284 of CPC, the expert witness would be regarded as public official in the implementation of TCRC. In this respect, Article 284 of the CPC has clearly confirmed the legal conclusion, which can be reached by appropriate interpretation of the purpose of Article 6 of the TCRC.

According to Article 128 of the Constitution, ‘Fundamental and continuous duties required by public services which government, public economic enterprises and other public legal person are obliged to perform are carried out by civil servants and other public officials.’\(^{12}\) In the joint headings of Articles 128 and 129 of the Constitution, ‘Provisions regarding O. Public Service Officials’\(^{13}\) is used to express the concept of ‘civil servant’ and ‘other public officials’\(^{14}\). According to the Court of Cassation, the phrase of public official ‘Contains two elements which are (i) a public service be undertaken by an official and (ii) an amount of money such as salary, wage, allowance being allocated from the governmental budget, regardless of the name under which such amount is allocated\(^{15}\). The Constitutional Court defined public service providers, who are not civil servants yet are bound to government through public law, and work for fundamental and continuous

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11 The full text of preamble of the article reads as: ‘Through the regulation in the article, the matter that expert witnesses are public officials within the meaning of Turkish Criminal Code is expressed in a clear and definite manner to prevent hesitations in practise regarding its position in terms of criminal law. It has thus been clarified that expert witnesses can commit crimes that can only be committed by public officials, in other words certain special crimes and they can be active subject of these crimes. This provision also serves to deter verbal and physical harassment against them.’

12 Emphasis belongs to the author.

13 Emphasis belongs to the author.


duties required by public services, as ‘public officials’. For this reason, according to the Constitutional Court’s decision referred above, allocation of a specific amount from government budget to a person who carries out fundamental and continuous duties required in the performance of public services is not a compulsory element for being regarded as public official.

Some scholars argue that only allocation of public funds from the government budget cannot be seen as a decisive factor for determining who is a public official, and that it is more important that the service to be carried out is a public service and the powers used are public oriented powers. Provisions of the law in CPC regarding the scope of the expert witness duty (Art. 269), obligation to accept duty (Art. 270), to administer oath to expert witness (Art. 271), being prohibited from doing its duty and challenge of expert witness (Art. 272), determination of his field of duty (Art. 273), term of duty (Art. 274), obligation to give information (Art. 275), obligation to carry out its duty in person (Art. 276), confidentiality obligation (Art. 277), powers (Art. 277), civil liability (Art. 285) are the legal basis of the public oriented character of the expert witness duty.

Within the framework of the above explanations, the fact that expert witness is a public official is not only valid for implementation of TCRC but also for all fields of law, as confirmed by scholarly opinion as well as precedents of the Constitutional Court and Court of Cassation. The said provisions of CPC are the normative basis of such a conclusion. I am of the opinion that Article 284 of the CPC which regarded expert witness as public official only in terms of implementation of TCRC will not change this conclusion.

It is important to note that the expert witness cannot be regarded as a public servant. According to Article 128 of the Constitution, ‘Fundamental and continuous duties required by public services with which government, public economic enterprises and other public legal person are obliged as per the general administrative basis are carried out by civil servants and other public officials.’ In the joint headings of Articles 128 and 129 of the Constitution, ‘Provisions regarding O. Public Service Officials’ is used to express the concept of ‘civil servant’ and ‘other public officials.’ Despite the difficulties in defining the concept of public servant, it is accepted that such a concept has two elements: (1) Conduct of a public service, (2) performance of fundamental and continuous duties required by public service by occupying a continuous position within the administrative staff and hierarchy. Concept of public official has broader content that also includes the concept of public servants according to Article 1 of the Law of Governmental Civil Servants (GPSL) numbered 657: ‘This Law shall be applied to public servants who work in Institutions with General and Annexed Budgets, Provincial Private Administrations, Municipalities, unions founded by Provincial Private Administrations.


18 Aydinalp, note 14, 23.

and Municipalities and circulated capitalised (döner sermayeli) institutions bounded to them, funds established by the laws, fund of bails or Regional Directorates of Physical Training.’ While ‘public servant’ was mentioned in Article 1, the term expert witness or a definition that could capture expert witnesses was not placed. Also, it is obvious that the expert witness does not continuously hold a position within the administrative staff and hierarchy. For this reason, from the legislative perspective, expert witnesses cannot be regarded as ‘public servants’.

c) Expert Witness According to Expert Witness Law

The Expert Witness Law regulates the qualifications that an expert should have. Article 10 of the Expert Witness Law (EPL) regulates the conditions for admittance:

‘Article 10- (1) Persons who would like to become expert witness should have the following qualifications:

(a) They should not be found guilty of crimes against national security, crimes against the constitutional order and its operation, embezzlement, malversation, bribery, theft, fraud, breach of trust, fraudulent bankruptcy, bid rigging, money laundering, smuggling, providing false expert report, providing false translation, perjury and false oath regardless of the time limitations set out in Article 53 of the TCRC and even if they were punished by imprisonment longer than a year due to a crime committed intentionally or they were pardoned.

(b) They should not have been removed from expert witness registry.

(c) They should not have been removed from profession or civil service or not having been temporarily or permanently barred from performing their art or working in their profession.

(d) They should not have been listed in the registry of another official regional authority (bölge kurulları).

(e) They should complete the fundamental training on the profession of expert witness.

(f) They should have work experience of at least 5 years in the area in which they will become expert witness unless a longer period is determined.

(g) Having had the necessary qualifications for working as a member of profession and having the relevant certificates showing expertise

(h) Having had the qualifications determined for principal and sub speciality areas.’

The same qualifications set out in Article 10/1 of EPL above are sought in persons to work as expert witness who are affiliated with private legal entities and issue expert witness reports.

Persons whose applications are refused on the basis of insufficient professional qualifications, cannot make another application within one year.

Persons who have a law degree are not registered to the expert witness registry and list unless they prove that they have a qualification other than law and they meet the
criteria set out in Article 10/1 of EPL.

By determining the criteria for admittance to the profession of expert witness, the lawmaker aimed on the one hand to improve the quality of adjudication and speed up the proceedings and on the other hand to reduce the compensation claims that may arise in connection with expert witness activities.

According to Article 12/1-4 of the EPL, persons who qualify according to the criteria set out above can start working as expert witnesses provided that they are registered to the expert witness registry and they take an oath. In case the restrictions set out in the Article 13 of Expert Witness Law applies, expert witnesses are removed from the registry and they are not appointed as expert witness unless they are listed in the expert witness registry again.

EPL Article 13 (1)- Expert Witnesses are removed from the registry and the list if the following conditions exist: a) Losing the qualifications for the admittance to the profession of expert witness or subsequent determination that qualifications needed for the expert witness registry did not exist at the time of registration. b) Hesitation to work as expert witness without any legal reason or not producing the expert witness report within the prescribed time without any excuse. c) Having behaved in such a way that is not in compliance with the profession of expert witness, this profession’s ethical rules and that causes distrust. d) Having worked as expert witness against the fundamental principles set out in Article 3. e) If the expert witnesses are found insufficient at the performance evaluations of the Regional Authority. f) If the expert witness does not renew its registrations in time despite his/her expert witness period is over. g) In case the expert witness requests his/her removal from the expert witness registry. (2) In cases of the conditions set out at sentences (b), (c), (d) and (e) of paragraph 1, instead of removal from the registry and the list the sanctions of giving an official warning or a temporary removal from the list up to 1 year can be considered depending on the nature of the breach.

The EPL has established an audit mechanism on experts’ attitude and behaviour related to their profession as well as the expert reports’ compliance with the regulation in order to maintain the standards of expert witnesses’ behaviours and attitudes related to their profession and to keep damages claims to be filed against them at a minimum level.

According to Article 14 of EPL titled Audit and Examination: (1) Expert Witnesses are audited in respect of their behaviour and attitude with respect to their profession as well as their reports’ compliance to the regulation by regional authorities either ex-officio or upon complaint. (2) The Judge or Prosecutor can inform the regional authority, in case they observe an issue in the behaviour or attitude of expert witnesses they appointed or in the reports of those expert witnesses. (3) The regional authorities cannot audit expert reports from technical or expertise perspectives. (4) It is not possible to make applications to the regional authorities about the content of expert reports in respect of technical information or expertise; applications of this nature are refused without any examination. (5) The regional authority can request information from judicial organs, official authorities, professional bodies, private entities or real persons regarding its
examination subject. The recipients of this request must attend to the issue. (6) In case it is determined that persons who are appointed as experts even though they are not registered to or listed in expert registry according to the Article 12/6 of Expert Witness Law acted as expert witness in breach of fundamental principles and ethical rules set out in the Article 3, they can be barred from expert witness profession by the decision of Regional Authority. The Central Authority is informed of this decision for its declaration.

According to Article 15 of Expert Witness Law, the decisions of the regional authority can be appealed to the same authority within 30 days as of the notification or declaration of the decision. The appeal decision of the regional authority can be litigated before the administrative court having jurisdiction.

III. CIVIL LIABILITY OF EXPERT WITNESS ARISING FROM REPORTS (GIVING OPINION) CONTRARY TO THE FACTS

a) General Information

The civil liability of expert witness is regulated under special provisions. According to Article 285 of the CCP, ‘(1) Those who suffered damages because of the expert report that the expert issued contrary to the facts by wrongful intention or by gross negligence and that was taken as a basis to the judgement by the court, can file a lawsuit against the government. (2) The government can recourse to the expert witness for the compensation that had been paid.’ According to this provision, if the report that the expert issued contrary to the facts by wrongful intention or by gross negligence is taken as a basis to the court sentence, those who suffered damages due to this expert report can file a compensation claim against the government.

Expert witness is obliged to carry out his/her duty under the supervision and administration of the court and if he/she has doubts regarding the scope or boundaries of his/her work, he/she can request clarification from court (CCP Art. 278). As it can be seen from this provision and other provisions regarding the expert witness, expert witness holds the position as assistant to the judge and his/her civil liability is regulated in a manner similar to the rules with respect to civil liability of the judge (CCP Art. 51).

b) Legal Characteristics of Government’s Responsibility Due to Expert Witness’s Report (Given Opinion) Contrary to Facts

According to the third paragraph of Article 40 of the Constitution, ‘The damages incurred by a person due to unjust actions of public officials is compensated by the Government according to the laws and regulations. Government’s right to recourse to the relevant official is reserved.’ There is a similar regulation in fifth paragraph of Article 129 of the Constitution. According to this provision, ‘Compensation claims arising from wrongdoings committed by civil servants or other public officials during exercise of their authorities, can be filed only against the government by following the forms and conditions indicated by law, provided that they will recourse to public officials.’ Thus, the Constitution has accepted the principal and first degree liability of the Government due to wrongful actions of civil servants or public officials in relation to their duties. According to first paragraph of Article 13 of the LGCS: ‘Persons do not file lawsuits against the personnel with respect to the damages they suffered due to duties subjected
to the public law, they file lawsuits against the relevant governmental authority instead. Governmental authority’s right to recourse to the responsible personnel is reserved.’ This provision of the LGCS regulates the principal and first degree liability of the public officials due to the damages they cause because of their duties.

Although the 1961 Constitution20 does not clearly regulate the liability of the civil servants and other public officials, employed by the government and public authorities, due to damages they cause to third parties by an unjust transaction or action during performing their duties, the 1982 Constitution and Article 13 of the LGCS have accepted the unconditional ‘administrative assurance’ system eliminating confusion on the issue of liability. 21

Administrative assurance principle means that compensation claims arising from damages that officials and in particular, civil servants and public officials have caused with their faulty or illegal actions or transactions during performing their duties or using their authorities, are not to be filed against themselves but to be filed directly against the government or the public administration which they work under. The government or the public administration, after compensating the damages suffered by third party, shall have recourse to the relevant civil servant or public official if the conditions are met.22 Administrative assurance principle serves the dual function of protecting both the civil servant and the person suffering damages. This approach incentivises civil servants or other public officials to perform their duty with confidence23 by the moral and legal guarantee provided by such assurance. At the same time, the person suffering damages also gets the opportunity to collect the compensation for damages suffered from the government without being restricted by the solvency of the civil servant who caused it.

In the preamble of Article 285 of the CPC, it is stated that concretisation of civil liability was sought by excluding slight negligence from the scope with respect to expert witnesses by regulating a parallel understating to Articles 129,V and 40/III of the Constitution.

According to Article 285 of the CPC, the government is held responsible for the expert witness report which is contrary to the facts. For this reason, it is not possible for the government to be released from liability by bringing presumptive evidence according to Article 55 of the former Code of Obligations (Article 66 of the TCO). In other words, the government cannot have the lawsuit dismissed by proving that it has taken all kinds

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20 Published in the Official Gazette dated 20 July 1961, Law No. 334.

21 This matter is clearly explained in the preamble of Article 13 of the LGCS. ‘...The article has accepted this principle which is more convenient and simple in terms of compensating the damage of the affected persons without addressing the debates regarding ‘faulty service’, ‘personal fault’ that diminish in scholarly debate and practice. Article 12 resembles the system called ‘assurance system’, deviating from the principle of ‘joint liability of administration and civil servant’ that so far has been in place in our country as well as in Anglo-Saxon countries and in Italy. In the current regime, administration and civil servants, are liable for damages incurred as a result of tortious acts. It is often stated that such situation creates numerous issues against civil servants... The provision brings a substantial solution to complaints in this regard.’ (Ozansoy p.222, by transfer from 223).


of measures or that the damage would be incurred even if it had taken all these measures. In case of a tortious act, the responsibility directly belongs to the person who caused the damage; however, in case of the civil liability of an expert witness, the liability shall not belong to expert witness who caused damages by issuing an expert report contrary to the facts, but to the state. The government can only escape from responsibility by proving that expert witness does not have any wrongful intention or gross negligence. No liability will arise if the expert witness issued the report contrary to the facts due to his/her slight negligence. The second important point that distinguishes the civil liability of expert witness from tortious responsibility is that it is the government who bears primary liability instead of the expert witness who issued expert report contrary to the facts.

c) Causes of Compensation Case for Monetary Damages to Be Filed Against Government Because of Expert Report Contrary to Facts

According to Article 285 of the CCP, ‘(1) Those who suffered damages because of the expert report that the expert issued contrary to the facts by wrongful intention or by gross negligence and was taken as a basis to the judgement by the court, can file a lawsuit against the government.’ This article lays out the conditions of the government’s liability arising from the report that is issued by expert witness contrary to the facts of the case.

According to the article cited above, firstly there must be a report which has been issued contrary to the facts. Secondly, it is stipulated that damages were incurred. Thirdly, there must be a causal relation between issuance of a report contrary to the facts and damage. Fourthly, wrongful intention or gross negligence of the expert witness is required. Finally, the act of the expert witness must be illegal.

1. Report or Opinion of Expert Witness

According to Article 285 of the CCP, considering the words ‘(1) ...report that the expert issued contrary to the facts....’ it can be said that a report is required to have been issued as a cause of the lawsuit. However, in the event that the report has not been issued and the expert has given opinion before the court, there may be hesitation on whether this article would be applicable. It is stipulated in Article 266 of the CPC that the judge can decide to take the opinion of the expert witness ex officio or upon request of the parties on subjects requiring special or technical knowledge other than law. It can be concluded from Article 154, I/d that it is possible to take the opinion of the expert witness by means of writing it down on the hearing minutes and that submission of a report is not obligatory. It is even possible to hear an expert who is in another location by transferring voice and image simultaneously (a live broadcast) in the event the conditions are met (Article 149 of the CPC). Nevertheless, it is also stipulated in the provisions regarding expert witness that the court can decide to take the opinion of the expert witness (Article 279, I of the CPC).

In light of these explanations, it would not be appropriate to conclude that the liability will arise only if expert witness issues a report but there is no liability because of his oral declaration contrary to the facts, even if such declaration is taken as a basis of measures or that the damage would be incurred even if it had taken all these measures. In case of a tortious act, the responsibility directly belongs to the person who caused the damage; however, in case of the civil liability of an expert witness, the liability shall not belong to expert witness who caused damages by issuing an expert report contrary to the facts, but to the state. The government can only escape from responsibility by proving that expert witness does not have any wrongful intention or gross negligence. No liability will arise if the expert witness issued the report contrary to the facts due to his/her slight negligence. The second important point that distinguishes the civil liability of expert witness from tortious responsibility is that it is the government who bears primary liability instead of the expert witness who issued expert report contrary to the facts.

for the decision. There is no rightful justification to make such distinction between the report and oral declaration which are contrary to the facts. The fact is the occurrence of the damage as a result of predating on the opinion of the expert witness, which is contrary to the facts and which was notified to the court in any way whatsoever. Moreover, giving opinion that is contrary to the facts is prophylactically deemed as a crime in Article 276 of the Turkish Criminal Code for expert witnesses and in order for such crime to be committed, issuance of a report was not set forth as a condition.

It is understood from the expression of ‘those who suffered damage due to the report which is contrary to the facts and taken as a basis to the judgement by the court’ that another condition for the responsibility is that the report (opinion) must be contrary to the facts. Naturally, a report (or an opinion) which is in compliance with the facts or not misleading will not lead to liability.

2. **Damages**

Article 285 of the CPC refers to ‘those who suffered damage’, leading to the second condition that existence of a ‘damage’ is required for liability. There is no distinction between pecuniary and non-pecuniary damage in the article. However, only pecuniary damages will be examined under this heading and non-pecuniary damages will be explained in the relevant section.

Pecuniary damage is the loss inflicted on a person’s assets out of his/her will. The court should examine whether actual damages were incurred and, if necessary, should carry out an expert examination in this regard.

3. **Causal Relation**

Another condition of government’s responsibility is the causal link. From the wording in the article ‘Those who suffered damages because of the expert report that the expert issued contrary to the facts was taken as a basis to the judgement by the court’, it is clearly understood that there must be a causal relation between the report (or opinion) which is contrary to the facts and damages. This causal relation must emerge by means of taking the report (or opinion) contrary to the facts as a basis to the sentence. If the report (or opinion) has not been taken as a basis to the sentence, it should be concluded that there is no causal relation between the report (or opinion) contrary to the facts and the damage. However, it should be considered that the provisions leading to disciplinary and criminal liability of the expert witness can be applied, if the conditions are met.

In the event that the expert witness report (or opinion) has been partially taken as a basis to the sentence, recourse to government’s liability could be mitigated to reflect this partial impact on the final decision to reflect this statutory provision’s purpose.

Another subject which should be examined under this heading is material mistakes. According to Article 183 of the CPC, ‘Obvious typing and calculation errors in the documents of the parties or the court, which are in the file of the case can be corrected until the decision is rendered (CPC, Article 294). If the trial is extended due to correction of typing or calculation error by one of the parties, such situation shall be considered

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25 Eren, note 22, 473.
while determining trial fees (CPC, Article 323).’ According to Article 304 of the CPC, ‘Typing and calculation errors and other obvious errors in the sentence can be corrected by the court ex officio or upon the request of the parties. If the sentence is notified, the judge cannot make a correction without hearing the parties. If the parties do not appear before the court upon invitation, the judge can decide by reviewing the case file.’ While there is no provision in these articles with regards to correction of apparent typing and calculation errors made by the expert witness, it should be concluded that it is always possible to correct such errors. However, the real question is how it will result in terms of liability if the obvious typing and calculation errors of expert witness made by gross negligence are taken as a basis to the sentence. From my point of view, it would be useful to make a dual distinction on this subject matter.

Firstly, it would not be appropriate to recourse to civil liability of the expert witness if the report (or opinion) contrary to the facts is taken as a basis to the sentence due to an obvious typing or calculation error, which can be easily understood by the judge and the parties.

For example, while determining the authenticity and value of gold, if the expert witness, after determining the authenticity of gold, made a material error while multiplying the gram price with 100 and rendered a sentence by failing to notice this obvious calculation error which can be easily understood by everyone, the expert witness should not be held responsible even though such an event can be considered as a gross negligence.

In the above example, the expert witness does not declare his special or technical opinion contrary to the facts of the case. Moreover, in such an event, causes for intervention may arise in which it should be accepted that the causal relation has been interrupted due to contributory negligence of the judge who did not detect such obvious calculation error and the party who did not object to expert witness report.26

If the expert witness made a calculation error while submitting special or technical opinion and such error is not easily determinable by the judge or the parties, the existence of gross negligence can be accepted. For example, in case of the alleged sale of a defective car based on the claim that the steering wheel does not rotate as fast as dictated by applicable standards, the expert witness may have miscalculated the turning radius of auto tyre dimensions. Liability may then arise if such error is not apparent.

4. Fault of Expert Witness Due to Wrongful Intention or Gross Negligence

Fault, is behaviour that is condemned and disapproved by law and that results in an illegal action. No one can be condemned for a lawful action. People living together in the society are obliged to behave in compliance within determined behaviour patterns. Such determined behaviour is an average behaviour pattern of an individual exercising due care in a social environment or an occupational group. Failing to comply with such behaviour pattern is characterised as fault.27

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26 Please see Eren, note 22, 523-526 for detailed information on interruption of the casual relation due to negligence of the damaged person or third party.

27 Eren, note 22, 530.
According to Article 285 of the CCP, as it can be easily understood from the expression that ‘Expert report that the expert witness issued contrary to the facts by wrongful intention or by gross negligence’, in cases which fall out of the scope of wrongful intention or gross negligence civil liability will not arise.

Wrongful intention is willingness of illegal consequence by the perpetrator.28 Negligence is failing to perform due care that is required under the circumstances to avoid unlawful consequences.29

The preamble of the article is as follows: ‘Concretisation of the constitutional rules mentioned above in respect of civil liabilities on of expert witnesses who are public officials was desired by the exclusion of slight negligence, through first and third paragraphs of the Article 289 of the draft law. To prevent the duty of expert witness from being unbearable, while holding the government responsible for the damages incurred due to issuing reports contrary to the facts it was sought that the report which is issued contrary to the facts and taken as a basis to the sentence must be the consequence of the wrongful intention or gross negligence of the expert. In this regulation, the case of slight negligence was completely excluded as is in the case of judges.’ Thus, preamble of the draft law seems to accept that the negligence split into slight negligence and gross negligence. If this part of the preamble is considered, it will be concluded that the provision intends to capture instances of gross negligence. Also, certain scholars categorise negligence as slight negligence (culpa levis) and gross negligence (culpa lata) with an understanding coming from Roman law.30 According to Eren, negligence can be split into three namely as ‘gross negligence’, ‘slight negligence’ and ‘medium negligence’.31 Having said that, since there is no opportunity to determine a definite limit on the levels of negligence, all features of the case at hand must be taken into account while rendering a judgement in this respect.

Failing to take the easiest precautions which must be taken by every reasonable person under the same conditions is accepted as gross negligence.32 While determining whether gross negligence applies, the occupation of which the expert witness (such as civil engineer, mechanical engineer, agricultural engineer, doctor) is a member should be taken in consideration instead of a lay person. However, bad practices common in an occupation are disregarded.33

Another subject that should be addressed under this heading is whether there is any opportunity for those, who had a chance to prevent damages by means of resorting to legal remedies but did not so act, to file a compensation claim.34 In order for civil

28 Eren, note 22, 535.
29 Eren, note 22, 537.
31 Eren, note 22, 540-541.
32 Eren, note 22, 540.
33 Oğuzman and Öz, note 30, 511.
34 For opinions and debates on the effect of resorting to legal remedies against the act of a bailiff to compensation claim see: S. Demir, Civil Liability Arising From Behaviours and Act of Bailiff, (Ankara: 2011), 81-83.
responsibility of the expert witness to arise, it was sought as a precondition in the second paragraph of Article 289 of the Ministerial Bill (same as Article 285 of the CPC) that in the case that those, who suffered damages, have the opportunity to prevent the damages by means of applying several legal remedies are required to exhaust such legal remedies but they could not have prevented the occurrence of the damage. However, second paragraph of Article 289 of the Ministerial Bill was removed from the article by Justice Commission of Turkish Grand Assembly for the reason that ‘…it was deemed appropriate to remove this article for the reason that the regulation regarding that the party who has opportunity to prevent the damage by means of applying to legal remedies could not file a compensation claim against the Government without resorting such remedy, strictly limited the opportunity to filing of such cases and that resorting to legal remedies is contradictive and assessable. Also, when the conditions of the liability case are met even though the legal remedies are not exhausted, failing to file a case does not comply with the right to legal remedies.’ Failing to resort to legal remedies due to these developments during law making process of CPC is not an obstacle to a compensation claim. However, Articles 51 and 52 of the Turkish Code of Obligations can be applied if the conditions are met.35

5. Illegality

Another fundamental element for fault-based liability is illegality. In case of non-existence of one of the reasons for compliance with laws, all actions which are inconsistent with the law, the prohibition against harming others or command a specific behaviour in order to prevent a harmful consequence, are illegal. Harmful action occurs when it conflicts with a legal norm that prohibits any intervention on the assets of another, protected by law.36

d) Causes of Compensation Case for Moral Damages to Be Filed Against Government Because of Expert Report Contrary to Facts

According to Article 285 of the CPC, ‘(1) Those who suffered damages because of the expert report that the expert issued contrary to the facts by wrongful intention or by gross negligence and was taken as a basis to the judgement by the court, can file a lawsuit against the government.’ Through this provision, the legislator did not make any distinction on whether the damages inflicted are pecuniary or non-pecuniary. For this reason, it can be stated that the causes for claiming non-pecuniary damage and claiming pecuniary damage is similar. In order to avoid reiteration of the explanations made as regards to pecuniary damage under this heading, the conditions of claiming non-pecuniary damages will be explained very shortly.

Report of the expert witness (his/her opinion) must be contrary to the facts. A report which is in compliance with the facts does not result in pecuniary liability nor does it cause any non-pecuniary liability.

Through the wording of ‘those who suffered damages’ in Article 285 of the CPC, in order to be held liable, existence of a damage is required. There is no distinction

36 Eren, note 22, 548.
between pecuniary and non-pecuniary damage in the article. Non-pecuniary damage means the loss inflicted on a person’s personality values, immaterial rights (personal rights, immaterial values) out of his/her will. \(^{37}\)

Through wording in the article ‘Those who suffered damage because of the expert report that the expert issued contrary to the facts was taken as a basis to the judgement by the court,’ it is clearly understood that there must be a causal relation between the report (or opinion) which is contrary to the facts and damage.

According to Article 285 of the CPC, as it can be easily understood from the expression that ‘Expert report that the expert witness issued contrary to the facts by wrongful intention or by gross negligence,’ that wrongful intention or gross negligence of the expert witness must exist.

The final condition for claiming non-pecuniary damage is that the report (opinion) must be illegal.

e) The Competent Court

According to Article 286 of the CPC,

‘The non-pecuniary claim to be filed against the Government will be heard before the civil chamber of the regional court of appeal which is within the jurisdiction of the court of first instance where the expert witness’ report contrary to the facts is taken as a basis to the sentence; and will be heard before the Court of Cassation where the expert witness’ report that contrary to the facts is taken as a basis to the sentence by regional court of appeal.’

The court which has jurisdiction is the regional court of appeal that is in the judicial locality where the expert witness’ report was taken as a basis by the court of first instance.\(^{38}\) If the expert witness’ report is submitted to the regional court of appeal, the court which has jurisdiction is the relevant chamber of the Court of Cassation.

As a matter of fact, the Court of Jurisdictional Disputes has decided through its decision\(^{39}\) that the case filed before administrative court with the request for compensation of a damage which was claimed to be incurred due to a faulty report obtained from specialised expert witness shall be settled before civil courts due to the fact that the act in question arose from a labour dispute.

f) The Parties of The Case

1. Plaintiff

The plaintiff of this case is the person who suffered damage due to the report of the expert witness that is contrary to the facts and that is taken as a basis by the court. Those can be natural or legal persons.

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37 Eren, note 22, 483.

38 Jurisdiction Agreement cannot be concluded for regional appeal courts (Article 375, II of the CPC). Because of this provision, it is not possible to file a compensation claim before the regional court which falls out of the jurisdiction of the court or first instance.

2. **Defendant**

For the purpose of compensation of this damage, the case can be filed against the government. If the case has been filed directly against the expert witness, then it must be decided that the case be dismissed.

g) **Trial Procedure**

The trial procedure for this type of case, which has been filed due to the report (opinion) of expert witness that is contrary to the facts and taken as a basis to the decision, has not been regulated explicitly. For this reason, it is necessary to determine the trial procedure to be applied to the case. In cases where there is no contrary provision, whichever procedure have been applied during the proceedings of court of first instance, either simplified (CPC, 316 ff.) or written procedure (CPC, Art. 118-186), the same procedure shall be applied before the regional appeal proceedings. However, it would be appropriate to interpret this provision as being limited to regional appellate review. In such case, I am of the opinion that since the compensation claim filed due to expert report contrary to the facts which is taken as a basis to the decision cannot be considered within the scope of the Article 316 of the CPC, written procedure should be applied to the case.

The third person (the expert witness in terms of our subject), until the end of the investigation stage, can intervene in the case as a secondary intervener on the side of the party whose success in the action is to the legal benefit of himself/herself for purpose of assisting that party. There must be a legal relationship between the person who wants to intervene to the case and the party of the trial in order to make intervention. The said legal relationship can be either between the third party and the party to which he wants to intervene or between him and the subject matter of the case. The decision to be given at the end of the trial must affect the legal relationship between the third person and the party. For this reason, since the expert witness has a legal benefit in the government winning the case, it is possible for him/her to intervene in the case on the side of the defendant government as a secondary intervener.

According to Article 61 of the CPC, '(1) when one of the parties loses the case, if he/she considers to recourse to third party or that the third party will recourse to himself/herself, can notify the case to the third party until the end of the investigation stage. (2) It is possible for the person to whom the case is notified, to make notification to other person who qualifies the same conditions; thus, the notification can continue successively.' Therefore, it would be appropriate for the government to notify the case to expert witness in the event that it is sentenced to indemnification.

h) **Recourse Action**

According to Article 286/II of the CPC, ‘The recourse action to be filed against the responsible expert witness by the government shall be heard before the court who decided on the compensation claim.’ Thus, it is clearly envisaged that the government shall recourse to the expert witness in the event that it is sentenced to compensate. The court which has heard the principal compensation claim is the competent court having jurisdiction.

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According to Article 287 of the CPC, “The government shall recourse to liable expert witness within one year as of the payment date, at the latest. If the expert witness report which was issued contrary to the facts, in such case, the criminal statute of limitations will be applied.”

The liability in recourse action arises from the fault of the expert witness in a manner of wrongful intention or gross negligence.

According to Article 69, II of the CPC, ‘In recourse action of the secondary intervener against the party, the claim that false decision was rendered on the principal case is inadmissible. However, the intervener can assert that the party on whose side he/she intervened in the case has incorrectly carried out the trial by means of claiming that he/she was not notified in a timely manner or the party of whose side he/she intervened on the case, has prevented the use of the claim and defence possibilities or the claim and defence possibilities which are unknown to himself/herself cannot be used due to gross fault of the party.’

IV. CRIMINAL LIABILITY OF THE EXPERT WITNESS ARISING FROM THE REPORT (GIVEN OPINION) HE/SHE ISSUED CONTRARY TO THE FACTS

The definition of civil servant has been made in the Article 279 of the former Turkish Criminal Code numbered 765 (FTCRC) as follows:

‘1- Civil servants or employees of the Government or other public institutions who permanently or temporarily carry out a legislative, administrative or judicial duty; 2- Other persons who permanently or temporarily, paid or unpaid, voluntarily or obligatorily carry out a legislative, administrative or judicial duty shall be considered as civil servants.

Persons who are the assigned with public service in the application of the Criminal Code are those who are: 1- Civil servants or employees of the Government or other public institutions who permanently or temporarily carry out a public duty; 2- Other persons who permanently or temporarily, paid or unpaid, voluntarily or obligatorily carry out a public duty.’

As per the FTCRC, the important thing for a person to be considered as a civil servant is whether he/she is obliged to carry out a public duty or public service. It does not matter whether such duty or service is permanent or temporary, paid or unpaid. According to this definition, the person who testifies before the criminal trial falls within the scope the civil servant definition. Naturally, all expert witnesses carry out public service, regardless of whether they are an official expert witness (court appointed expert) or fall within the scope of unofficial expert witness (party appointed expert), they shall be considered as civil servants under the FTCRC. Accordingly, whereas the official expert witnesses are considered as civil servants as per first sentence of the first paragraph of the Article 279 of the FTCRC, the unofficial expert witnesses shall be considered as per second sentence of the first paragraph of the Article 279.41 There used to be a consensus in both scholarly opinion and in trial practice that expert witnesses

are civil servants within the meaning of the Article 279 in terms of the application of the FTCRC.\textsuperscript{42}

According to Article 6 of the TCRC, it is understood that ‘The phrase public official shall mean a person who involves a conduct of public service by mean of assignment or election or in any way whatsoever, continuously, periodical or temporarily...’ The preamble of this article, it is also explained as follows: ‘...The definition which will sustain the inconveniences that the definition of “civil servant” in FTCRC causes, has been removed from the Draft text and the definition of “public official” which also contains the concept of civil servant, was placed instead. According to the new definition, the sole criterion to be sought in order for a person to be considered as a public official is that the work being carried out should be a public service.’\textsuperscript{43} In addition, it is clearly stated in this preamble that the expert witness and translator are considered as public officials.\textsuperscript{44}

Considering expert witnesses as public officials has two separate consequences. The first one is that actions directed to expert witnesses shall be deemed as if they were committed against public officials and their actions will be evaluated within the scope of aggravated crimes. For example, it has been regulated as a reason of arrest in the article 100;II/b-2 f the TCRC that ‘Attempting to put pressure on the witness, victim or others’ as well as in crimes as wilful murder (Art.82,I,g), wilful injury (Art. 86,/III,c). It will be the case that the expert witnesses shall be evaluated within the scope of ‘others’ warranting arrest.\textsuperscript{45}

Expert witnesses are included in the scope of the perpetrators of the crimes that can only be committed by public officials. Expert witnesses, during their duties, can be the perpetrators of specific crimes that can only be committed by public officials. They can be perpetrators of the crimes such as bribery (Art. 252 of the TCRC), malversation (Art. 250 of the TCRC), professional misconduct (Art. 257 of the TCRC).

According to Article 277 of the CPC, ‘Expert witnesses are obliged to keep secrets that they find out due to their duties or during performing their duties and they are obliged to avoid using them to the benefit of themselves or of others.’ Another obligatory element of an expert witness’ obligation to perform his/her duty in a loyal manner is to

\textsuperscript{42} S. Erman, \textit{Civil Servant in Criminal Pratice and Investigation}, (AÜSBFD, C. 1947/3-4, p.235-276) 236; I. Malkoç, \textit{Turkish Criminal Code with Explanations, Precedents and Latest Amendments}, (Ankara: 2000), 592; Malkoç, \textit{Judgement of Civil Servants}, (Ankara: 2000), 53 ff; Court of Cassation has defined the civil servant in respect of criminal law in a decision as follows: ‘Those who carry out a legal act or dispose by using governmental legal power and authority and those who involve in and assist this legal act and dispose duly and in compliance with public law are civil servants.’ (25 November 1985 T, YCGK 410/593).

\textsuperscript{43} TBMM, Period:22, Legislative Year:2, Row Number.:664, p.408.

\textsuperscript{44} As known, public activity is a type of service which is executed on behalf of public as a result of political decision taken through in compliance with rules and means stipulated in the Constitution as well laws and regulations in place. It is not important whether the persons, who participated to the operation of the activities, have been remunerated in the form of salary, fees or have been remunerated monetarily at all whatsoever. It is equally not important whether they do this work permanently or temporarily. In respect of notary public and lawyers that they are public official considering the way in which they perform their job. Similarly, expert witnesses, translators and witnesses are public official in terms of the performance of these activities. Military personnel are also categorically public officials. In this respect, for example, military officers, gendarmerie and soldiers who intervened into a crime scene or moving a culprit are public officials.

\textsuperscript{45} Dönmez, note 41, 1168.
keep secrets they were confided with during the performance of their duties and thus are obliged to avoid using them to the benefit of themselves or of others. Behaving contrary to this obligation constitutes a crime (Art. 284 of the CPC; Art. 258 of the TCRC). In the event that the expert witness discloses or publishes the documents, decisions, orders or other notifications given to him due to his duty and which are required to be confidential, ‘crime of disclosure of the information with respect to duty’ will occur (Art. 258 of the TCRC).

Also, the crime of ‘Carrying out Profession of Expert Witness and Translator Contrary to the Facts’ has been regulated under TCRC. This article punishes the expert witnesses and translators for misstating the facts and for wrong translations made by wrongful intentions. If the opinion of the expert witness to be given as per his/her own knowledge and evaluation is only incorrect and without a wrongful intention, then no crime will have been committed.\textsuperscript{46}

As it can be clearly understood from the explanations made above, the legislator made special regulations in TCRC due to importance of the duty of the expert witness instead of leaving the subject to be resolved by general provisions. This is an indication of how important the duty and responsibility that is undertaken by the expert witness in judicial field is.

V. DISCIPLINARY LIABILITY OF EXPERT WITNESSES ARISING FROM THEIR REPORT (VOTE OR OPINION) CONTRARY TO FACTS

As a rule, becoming an expert witness is voluntary. However, to avoid difficulties in finding witness experts in certain special areas, it is obligatory for certain people having specialty in those areas to become expert witness. These persons listed in Article 270,I of the CPC (1—Official experts and experts listed in Article 268 of the CPC; 2—Persons who cannot practice their profession or art without the knowledge they have for which their expert witness is requested; 3—Persons who are officially authorised to practice the profession or art for which their expert witness is requested) can only abstain from becoming expert witness only on the basis of reasons to abstain from becoming a witness to a lawsuit as per Articles 247 and 250 of CPC.

Expert witnesses who do not appear before the court at the exact date and time as per the invitation by the court or who hesitate to produce their opinion or vote in time following their oath at court, will be penalised as per the disciplinary clauses envisaged for witnesses as per the Article 269/II of the CPC.

Expert witnesses are appointed amongst persons in the lists which are to be prepared on an annual basis by Judiciary’s Justice Commission of Regional Justice Courthouse.

In case there is no expert witness in the list whose expertise knowledge is to be sought, an expert from the lists of the neighbouring Regional Justice Courthouse can be appointed. If there is no expert in lists of the neighbouring Regional Justice Courthouse,

\textsuperscript{46} The article is as follows: ‘(1) In the event that the experts witness who assigned by judicial authorities, person with legal power to make investigation or to hear witness under oath or by board, issues a report contrary to facts is sentenced to imprisonment for one to three years. –(2) In the event that a translator who is assigned by those mentioned in first paragraph translates the documents or expression as contrary to the facts the first paragraph shall be applied.’
an expert who is not in the lists can be appointed according to the Article 268/1 of the CPC.

With this regulation, it is aimed to have the experts of an area be appointed as expert witness and to discipline and monitor the expert witnesses.

The time within which the expert report will be issued cannot be longer than 3 months. However, upon the request of expert witnesses, the court can extend this period by providing its reasoning and provided that the extension is no longer than 3 months according to the Article 274/1 of the CPC. An expert witness who does not produce the report within the prescribed time can be replaced by another expert witness. In such a case the court requests information from the dismissed expert witness about the work carried out with the capacity of expert witness until the point of dismissal. The court also requests the expert witness to return court documents and attachments that the expert witness received for examination purposes. The court decides not to make any payment to the expert witnesses in the form of expenses or fees; decides to request the Regional Justice Court’s Justice Commission to bar the expert witness in question from becoming an expert witness for a period of time or removal from the experts’ list by providing a reasoning according to the Article 274/ II of the CPC.

Having regard to those regulations it can be said that temporary or permanent removal of experts who have not produced their reports in time from the experts’ list and registry can be seen as a disciplinary sanction.

Disciplinary sanctions over expert witnesses are not limited with the ones above. According to the Article 71 of the CPRC, the expert witnesses who do not comply with the court’s invitation or who do abstain from providing their oath, opinion or vote will be subjected to the penalty clauses envisaged for witnesses as per Article 60 of the CPRC.

If the assigned expert witness is also a civil servant or an official in an institution that qualifies as a public institution, disciplinary provisions of the Law on Civil Servants may be applied on the grounds of the attitudes and behaviours of the expert witness which are incompatible with duty requirements carried out during performing the expert witness duty. However, in such event, acts or actions in question must be in breach of internal regulations that envisage disciplinary sanctions in the LGCS (Art.125). A similar sanction may apply if the expert witness breaches the standards of the profession to which he/she is a member.