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CHALLENGES OF EXPERT EVIDENCE IN THE ACT III OF 1952*

A SZAKÉRTŐI BIZONYÍTÁS KIHÍVÁSAI AZ 1952. ÉVI III. TÖRVÉNY ALAPJÁN

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Abstract: Expert evidence is a long-established legal institution of unquestionable importance and relevance. It may be called upon, when it is necessary to establish or assess relevant facts of the legal dispute, or to determine the boundaries of the case. However, its application in practice has often been a source of confusion for the courts, given that the Act III of 1952, which laid down the procedural rules for the second half of the 20th century and the beginning of the 21st century, did not adequately define the rules in relation with experts. The present study focuses on these practical problems by examining the Act and the related legal practice – stressing out the place of the legal institution of private expert evidence in the Civil Procedure Code of 1952, given, that this was the issue, that most concerned the legislator during the codification process.

Keywords: *Hungarian civil procedure law, Code of Civil Procedure, expert evidence, legal practice*

Absztrakt: A szakértői bizonyítás nagy múltra visszatekintő jogintézmény, melynek jelentősége és aktualitása megkérdőjelezhetetlen. Igénybevételére akkor kerülhet sor, amennyiben az a perben jelentős tények megállapításához, vagy a jogvita kereteinek tisztázása érdekében szükséges. Gyakorlatban való alkalmazása azonban sokszor fejtörést okozott a bíróságoknak, tekintettel arra, hogy a 20. század második felét, valamint a 21. század elejének eljárásjogi rendelkezéseit meghatározó 1952. évi III. törvény nem fektette le megfelelően a szakértőkre irányadó szabályozást. Jelen tanulmány ezen gyakorlati problémák vizsgálatára fókuszál a jogszabály, illetve a kapcsolódó bírósági esetjog feldolgozása által – kiemelt hangsúlyt fektetve a magánszakértői bizonyítás jogintézményének 1952-es Pp.-ben betöltött helyére, tekintettel arra, hogy a kodifikáció során ez a kérdéskör foglalkoztatta leginkább a jogalkotót.

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Kulcsszavak: *magyar polgári eljárásjog, polgári perrendtartás, szakértői bizonyítás, bírósági joggyakorlat*

Introduction

Evidence is a crucial part of the civil procedure, and is fundamental to the whole process. If we take a closer look at evidence as a procedural act, it reveals that it is nothing more, than an activity of the court and the parties. The obligation to facilitate the proceedings, laid down in the fundamental principles, places the burden of presenting evidence and submitting it to the court on the parties as a general rule, excluding exceptional cases, where the court may order or take evidence on its own motion. The court makes sure of the facts and fictions of the evidence provided,[1] and as a result of the evidentiary procedure, records the established facts in its judgment. In many cases, however, the judge is called upon to give an opinion on specialised topic, which he does not have the special knowledge to assess, and therefore requires the opinion of a third party – a judicial expert – on the relevant specialised topic(s). According to Géza Imregh, the opinion of an expert is '*a factual data based on scientific, technical or other scientific laws, which provides objectively certain comparative facts for the purpose of establishing the truth or falsity of the factual statements of the party or parties of the dispute*'.[2]

If we take a closer look at the history of the Hungarian civil procedure law, certain provisions on expert evidence were already ensured in the second half of the 19th century,[3] and then, after the turn of the century, it was the *Act I of 1911* (better known as Plósz Act), which attempted to create a comprehensive, detailed regulation. The Code of 1911 already contained a separate chapter on experts and laid down rules, which became guiding principles of expert evidence in the Hungarian civil procedure for a long time.[4]

Due to the continuous change and development of social conditions and the legal environment, the Plósz Act was replaced by the *Act III of 1952* on the Code of Civil Procedure (hereinafter: the Act of 1952), which, with its numerous amendments, defined the civil procedural law of Hungary for more than sixty years, and at the same time, the provisions on expert evidence – becoming one of the most decisive acts of the Hungarian civil procedural law. However, the question arises as to how accurate and comprehensive were the regulations in relation with experts. What kind of effects the procedural provisions laid down in the Act have had on legal practice under the Code of Civil Procedure? My aim is to answer these questions in this research.

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1 KENGYEL Miklós: *Magyar polgári eljárásjog*. Osiris Kiadó, Budapest, 2005, 185.

2 IMREGH Géza: Szakértői bizonyítás a polgári eljárásban. *Magyar Jog* 2002/11., 649.

3 The Act LIV of 1868 named the expert activity only in connection with the judicial inspection.

4 See: DÖME Attila: *A Plósz-féle Pp. bizonyítási szabályai*. Manuscript. 3.

1. The Act III of 1952

1.1. The officially appointed expert

The Act declared, that if any special knowledge (which the court is lacking) is required in the proceedings for the establishment or judgment of any relevant fact or other circumstance, the court shall appoint an expert.[5] An expert could be anyone, who was able to substitute the lack of expertise of the court – except the judge, the parties, the other parties of the proceedings and people excluded by law. However, if it is necessary for the resolution of the dispute, and if the legal conditions are fulfilled, the court may not dispense with the appointment of an expert.[6] The special expertise, which is required on the part of the expert – as an objective criterion – means knowledge of empirical facts. These may be established scientific or technical theses, which can be found in specialised textbooks, but they may also be theses, that the expert has acquired through many years of experience. By comparison, the statutory phrase *'which the court is lacking'* is a subjective criterion, since it cannot be excluded, that the judge may have acquired in the course of his long practice the knowledge of other fields of expertise, or his previous profession may have provided him with knowledge, which makes the appointment of an expert pointless.[7] However, it is the task of the court itself to judge the extent of its expertise in the subject matter, and the utmost caution should be exercised in such cases, as *'it is better to appoint an expert – even if it might seem unnecessary –, than to give an erroneous judgment on the basis of imaginary expertise'*.[8]

Although, the expert substitutes the missing expertise of the court, he cannot take the role of the court. According to the practice developed on the basis of the Act of 1952, the court may not delegate to the expert the task of discovering the facts and circumstances, which are necessary to decide on the case, nor may it delegate to the expert the power to deliberate the evidence. It is a breach of an essential procedural requirement for the court to entrust the expert with the assessment of a point of law.[9] The court may not ignore the appointment of an expert, if it is necessary for the adjudication of the dispute, and if the legal conditions for the appointment are met.[10] In a retrial, the appointment of an expert cannot be ignored as well, if a specialised topic arises, in which the court does not have sufficient expertise to assess.[11]

The Act of 1952 declares, that an expert, who may be employed in civil proceedings is a means of evidence – and his expert opinion can be used as evidence

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5 Act III of 1952 on the Code of Civil Procedure, Section 177, Subsection 1.

6 BH2010. 169.

7 KURUCZ Krisztina: A bizonyítás. In: PETRIK Ferenc (ed.): *Polgári eljárásjog I-IV. – Kommentár a gyakorlat számára*. HVG-Orac Lap és Könyvkiadó, Budapest, 2016, 270–271.

8 BH1957. 1678.

9 BH1976. 494., BH1987. 411., BDT2003. 780.

10 BH2010. 169., KGD2012. 79.

11 EBH2006. 1465.

in the legal dispute.[12] When appointing an expert, the parties had to agree on the person of the expert in the first place: the court was obliged to give the parties the opportunity to agree on the person of the expert and to submit their motions, concerning the person of the expert and the questions to be addressed to him. This could even take place at the hearing prior to the order for expert evidence, at which point the parties could immediately make statements, refer to any grounds for exclusion of the experts in question, and agree on the expert to be appointed.[13] The court could only decide on the expert, if there was no agreement between the parties.[14] However, the right of the parties to do so was not unlimited, as they could not choose an expert, who did not have competence in the particular subject matter. Furthermore, the circle of the people, who could be appointed as experts was precisely defined in Section 177, Subsection 2 of the Act of 1952: only a judicial expert listed in the register of experts, a company or an expert institution authorised to give an expert opinion, or a public body, institution or organisation specified in a separate statute could be an expert.[15] The appointment of another expert could be done in exceptional cases, if these conditions were missing.

The court could appoint another expert at the request of a party, only if it appeared necessary for the purpose of taking evidence.[16] It is important to note, that Section 177 Subsection 3 also applies in this case, according to which the court is entitled to appoint another expert, if the parties have not agreed on the person of the new expert. However, it should be pointed out, that if the court has appointed an expert on the basis of an agreement by the parties, another expert has only been appointed before the submission of the expert opinion, if the expert originally appointed was late in giving his opinion, if there were grounds for disqualification, or if he was unable to act for other important reasons.[17] The party could also request the appointment of another expert, if his opinion was inconclusive,[18] and the inconclusiveness could not be resolved by supplementing the opinion of the expert, or, in the case of several expert opinions, by resolving the contradictions between them. However, the obligation of the court to provide information also existed here, since according to Section 3, Subsection 3 of the Act of 1952, the court was obliged to inform the party producing evidence of the necessity to prove the fact and the burden of proof in this respect, even if it had already given general information in

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12 See: Act III of 1952 on the Code of Civil Procedure, Section 166, Subsection 1.

13 DÖME Attila: A szakértő bizonyítás. In: Kengyel Miklós (ed.): *A polgári perbeli bizonyítás gyakorlati kézikönyve*. CompLex Kiadó, Budapest, 2005, 240.

14 Act III of 1952 on the Code of Civil Procedure, Section 177, Subsection 3.

15 It is important to point out, that the Act CXXX of 2016 currently in force also considers this enumeration to be authoritative, in accordance with the officially appointed experts.

16 Act III of 1952 on the Code of Civil Procedure, Section 177, Subsection 6.

17 KURUCZ Krisztina: i. m. 272.

18 According to Section 182, Subsection 3 of the Act, the expert opinion shall be deemed inconclusive, if it is incomplete or does not contain the mandatory content elements of an expert opinion as required by law, it is vague, it is inconsistent with itself or other data of the action, or there is otherwise significant doubt regarding its correctness.

advance, because the party might have thought, that he had fulfilled his obligation to prove the fact, although the court considered, that this has not happened.[19] The court also had to warn the party, that in the absence of a new expert opinion, it could consider the expert evidence to be unsuccessful.

Pursuant to Section 181, Subsection 1, the expert was entitled to make copies of the documents of the case with a view to perform his tasks, be present during the hearing, and to propose questions to be asked of the parties, witnesses and to the other experts, and to make a motion for other evidence – since in order to be able to fully perform his duties, he had to have access to information, which were relevant to the specialised topic. With regard to the obligations of the expert, the legal literature refers to three obligations: the obligation to appear, the obligation to give an expert opinion, and the obligation to carry out an expert examination.[20]

1.2. The "silence" of the Act: private expert evidence

There is no doubt, that the regulations of the Act were a huge step forward within the history of the Hungarian civil procedure rules. However, according to the opinion of Attila Cséffai, the provisions of the Act of 1952 on experts were introduced with *'deficiencies, inaccuracies, and in other places, confusingly inconvenient phrasing'*.[21] One of the areas of law, that suffered from inconsistent legislation was definitely expert evidence, which is best illustrated by the fact, that the Act only mentioned the rules for the officially appointed expert, and did not contain any provisions for the expert acting on behalf of a party, the party-appointed or a private expert, despite the fact, that private expert evidence showed an increasing tendency in legal practice. As a result of the absence of rules on the party-appointed expert, it has fallen to the judiciary to rule on the status of the private expert in litigation, and the legal nature of the opinion of the party-appointed expert. However, this has not proved to be an easy task.

The regulations with loopholes have caused confusions in many areas of legal practice. It has become a common practice for the parties to submit private expert opinions at the end of the expert evidence, when one or more officially appointed expert opinions were already available in the legal dispute. In this situation, by submitting an opinion of a party-appointed expert, the parties basically wanted to "achieve" the questioning and "raising of concerns" about the opinion of the officially appointed expert, which could lead to the appointment of further experts and the obtaining of new expert opinions[22] – this has contributed greatly to the length and inefficiency of civil litigation. On the other hand, the courts have also had

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[19] See: Opinion No 2. of 2004 (II. 6.) of the Civil, Economic and Administrative Chamber of the Baranya County Court.

[20] KENGYEL Miklós: Bizonyítás. In: Kiss Daisy – Németh János (eds.): *Nagykommentár a polgári perrendtartásról szóló 1952. évi III. törvényhez*. Wolters Kluwer Kiadó, Budapest, 2014 (Online legal database).

[21] CSÉFFAI Attila: A szakvélemény evolúciója a Pp.-ben. *Jogtudományi Közlöny* 2014/12., 591.

[22] VITVINDICS Mária: A szakértőkre vonatkozó szabályozás megújítása az új polgári perrendtartásban. *Advocat*, Special edition of 2017, 20.

problems with the assessment of the opinion of private experts. Since the system of free taking of evidence in the Code of Civil Procedure did not exclude the obtaining of the opinion of the party-appointed expert, in theory, any means capable of establishing the facts, including private expert opinion could be used as evidence, but the court was free to consider their evidentiary value on a case-by-case basis.[23] As a result, the legal practice was not uniform, and in the period of the Act of 1952, the estimation of the party-appointed expert and his opinion was continuously changing.

2. Private expert evidence in legal practice

The uncertain rules and jurisprudence governing expert evidence and the unclear status of private experts in litigation have raised questions for the courts. With regard to the legal practice under the Act of 1952, it can be noted, that the Curia (formerly known as the Supreme Court) itself has taken five different approaches to the assessment of the opinion of the private expert, taking into account the relevant legislation and all the important circumstances of the disputes. As a result, the legal practice has represented diverse views and applied different solutions.

1. For a very long time, there was a strong view in the jurisprudence, that the private expert opinion cannot be considered as evidence. The explanation for this lies in the fact, that on one hand, the Act did not explicitly mention it as evidence (nor was a party-appointed expert specifically mentioned within the usable means of evidence), and, on the other hand, the legal viewpoint, that became the prevailing view, was that it could be a violation of the principle of coexistence and equality of the parties, if one party unilaterally obtained an expert opinion, without the knowledge and cooperation of the court and the opposing party.[24] In addition, as the opinion of the party-appointed expert was commissioned by the party and had to be provided for a fee, his impartiality was questionable. Consequently, the expert opinion formulated by the private expert and submitted by the party was only equivalent to the professional opinion and personal presentation of the party, and could be assessed in that respect.

This view is also expressed in the Judicial Decree of the Supreme Court, no. 102 of 1996. The marriage of the parties was dissolved by the court of first instance and their minor child was placed with the mother, the defendant. The court based its judgment on the opinion of the officially appointed psychologist expert, who stated, that the child, although attached to both parents, felt safe with his mother. Following the appeal of the plaintiff, a second instance procedure was held, in which the plaintiff submitted a private psychological expert opinion and requested

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[23] MOLNÁR Ambrus: Összefoglaló megállapítások. In: Molnár Ambrus (ed.): *A szakértői bizonyítás a bírósági eljárásban – Tanulmányok a szakértői bizonyítás témaköréből*. http://www.kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2.pdf, 12 April 2023, 355.

[24] MOLNÁR Ambrus: A magánszakértői vélemény perjogi helyzete a polgári peres eljárásban. *Kúriai Döntések* 2014/12., 1327.

the supplementation of evidence. The court of second instance declared, that the opinion of the party-appointed expert was not contrary to the opinion of the officially appointed expert, as it also stated, that both of the parents were able to raise the child, so the court upheld the judgment of first instance.

The Supreme Court also reached the same conclusion in its review proceeding, and stated, that the court of second instance had acted in accordance with the law, when it saw no reason to supplement the evidence on the basis of the opinion of the private expert, submitted by the plaintiff. The opinion of the party-appointed expert was based solely on the examination of the plaintiff and the child, and did not contain any new information in respect of which the court should have had to hear the expert once again. Furthermore, it pointed out – with regard to the applicable legal practice –, that a private expert opinion, drawn up at the request of one of the parties, cannot be taken into account as evidence, but only as the personal statement of the party.

This perspective is also prevailing in the decision no. 59 of 2004 of the Supreme Court, which was focusing on a maintenance contract. In the original proceeding, the defendant and the late father of the plaintiff concluded a maintenance contract. The plaintiff, in his statement of claim impeached the validity of the contract, claiming, that at the time of the conclusion of the contract, his father had no capacity to act, due to his illness. In order to prove this, he obtained an opinion of a private medical expert, who suggested, that his late father may have had limited capacity to act at the time of the conclusion of the contract. The Supreme Court determined within the statement of reasons of the judgment, that only expert opinions submitted by experts appointed by the court are considered to be evidence. The courts of both instances were therefore right, when they did not take the opinion of the party-appointed expert into account as evidence, but only as the profession opinion of the plaintiff.

2. As kind of an intermediate solution, the decisions of the Supreme Court can be taken into account, which, while still adhering to the point of view established by legal practice, maintaining the notion, that the opinion of a private expert is equivalent to the personal viewpoint of a party, have tended to place the opinion of the party-appointed expert within evidence.

The Judicial Decree of the Supreme Court, published under no. 365 of 1999, concerned compensation under an insurance contract, based on a burglary. The plaintiff brought an action for damages against the defendant, who, however, reserved from doing so. A total of three investigating experts were heard in the dispute: one during the investigation phase, on the basis of the crime report, and an officially appointed expert in the civil proceedings, as well as a private expert acting on behalf of the defendant. The defendant resented the fact, that the private expert opinion was disregarded by both the court of first and second instance in the judgment, and that the contradictions between the expert opinions given at the investigative stage and those given at the procedure of first instance were not resolved.

In its statement of reasons, the Supreme Court emphasised, that the courts had correctly pointed out, that the opinion of the private expert, who had been unilater-

ally invited by the defendant, could only be taken into account as a personal statement and a professional opinion of the defendant. However, this qualification did not preclude the court from underlining the discrepancy between the opinions of the investigating expert, who had acted during the investigative stage, and the investigating expert heard by the court of first instance and the need to resolve the resulting contradiction.

In the original proceeding of the Judicial Decree no. 192 of 2007, the plaintiff was in an employment relationship with the defendant, who assured the plaintiff the right to use an apartment, with regard to the job of the plaintiff as a caretaker. According to a previous contract between the parties, if the employment relationship of the plaintiff is terminated, the defendant guarantees the plaintiff the use of another apartment. Later on, the plaintiff terminated his employment relationship – however, the defendant admitted his claim for another apartment, but referred to the lack of finances, so the plaintiff was bringing an action for the fulfilment of the contract, or the pecuniary redemption of the apartment. The court of first instance dismissed the claim, however the plaintiff appealed against the judgment. In the proceeding of second instance, the plaintiff submitted a private expert opinion, to determine the commercial value of the apartment, and in this manner, the court of second instance amended the judgment, in favour of the plaintiff.

Thereafter, the defendant filed for a review application, and referred to the lack of ordering expert evidence by the court of second instance, and that, the opinion of a party-appointed expert is only assessed as a personal statement of the party. The Supreme Court upheld the judgment and pointed out, that the private expert opinion, obtained by the plaintiff is indeed a professional opinion, but must be assessed within evidence.

3. The next steps in the legal assessment of the opinion of the party-appointed expert were the decisions which, while not yet treating it as equal to the opinion of the officially appointed expert, took the private expert opinion into account in the context of the need to resolve contradictions.

In a decision of the Supreme Court, registered under no. 233 of 1983, the plaintiff purchased the spraying machine of the defendant. Later, the plaintiff made several repairs to the machine himself, and then withdrew from the contract on the grounds of defective performance, which the defendant refused to accept and did not want to repay the original price of the purchase to the defendant. The court of second instance considered, that the opinion of the officially appointed expert was conclusive, and based its judgment on that opinion, although it did not take proper account of the opinion of the private expert used by the plaintiff.

The Supreme Court declared, that the statement of the court of second instance, that the expert opinion was conclusive, and that the proceedings did not raise any evidence that could overturn it, was wrong. The court of first instance did not properly resolve the contradictions between the testimonies of the witnesses and the basic and supplementary opinions of the officially appointed expert, nor the differencies between the expert opinion and the presentation of the plaintiff and the private expert opinion submitted by him, therefore the dispute could not be decided properly.

From my point of view, at this stage, the Supreme Court has not yet taken a firm stand, that the private expert opinion can be considered as evidence in litigation, but at the same time it has assessed it as a quasi evidence, by drawing attention to the contradictions between the expert opinions, and by finding the legal institution itself capable of derogating the opinion of the officially appointed expert.

In court decision, published under no. 759 of 2003, the plaintiff brought an action for damages against the defendant, the road manager, because a tree branch has broken on the roadside, and it has caused damage to him. Although the defendant sought to confirm his statement by submitting a private expert opinion, the court of first instance, in an interlocutory judgment, determined his liability for damages. The defendant appealed, referring to a fact, that he had regularly checked the condition of the trees along the roadside in accordance with the legal requirements, and that the branch in question had been broken by a strong storm, which was irreversible. The tree was perfectly healthy inside and out, and therefore he did not breach his obligation by not deciding to cut down the tree in question. Accordingly, no unlawfulness on his part can be established and he is not liable for the damage.

The court of second instance noted, that the court of first instance had committed a procedural violation, when, despite a motion, it did not obtain an expert opinion, and thus made the facts of the case defective. Furthermore, it has failed to fulfil its obligation to make a statement by not giving reasons for the rejection of the opinion of the party-appointed expert, submitted by the defendant, which was otherwise a part of the case. The court of second instance remedied the deficiencies by supplementing the evidence by appointing a judicial agricultural expert, who provided a conclusive expert opinion, which helped to clarify the context of the dispute. The expert confirmed, that the tree was in a diseased condition when the branch broke off, which the road manager should have been able to ascertain – so the court of second instance upheld the judgment. However, the court pointed out, that the opinion of a party-appointed expert, attached by the defendant is a means of evidence, not specified by the Act of 1952, but it has to be taken into discretion, as it can make the opinion of the officially appointed expert inconclusive, and to be able to compete with and deteriorate the evidentiary value of the opinion of the officially appointed expert.

Therefore, the legal practice has rightly recognised, that in the system of the free taking of evidence, the parties attempt to weaken the opinion of the expert appointed by the court by a private expert opinion must be supported, just as it is also necessarily supported, that the party obtaining the private expert opinion must be given the opportunity (a procedural opportunity) to compete the opinion of the officially appointed expert with any appropriate statements of the opinion of the party-appointed expert, which could weaken the opinion of the expert, appointed by the court.[25]

[25] ÁROK Krisztián – KŐMŰVES Barbara: Eljárásjogi science fiction, avagy a magánszakértő, mint tanú a polgári perben. *Jogtudományi Közlöny* 2017/3., 142.

4. The legal practice has taken a huge step forward, when the opinions of private experts have been assessed as evidence in the decisions of the courts. In particular, this qualitative change can be observed in Judicial Decree no. 181 of 2001, where according to the statement of reasons of the judgment was that, if the reason for inconclusiveness of the expert opinion is, that there are two conflicting opinions in the dispute, a joint hearing of the experts is necessary. In this case, the another expert opinion may also be a private expert opinion, which means, that the court has taken the private expert opinion into account as evidence.

In the general proceedings of the decision of the Supreme Court, no. 17 of 2003, the plaintiff sought an order, that the defendant has to pay compensation for material and non-material damage on the grounds, that his health had suffered a negative turnaround, as a result of medical negligence. The question raised in the proceedings was whether a causal link could be established between the illness of the plaintiff and the development of the surgical complication. There was a contradiction between the opinion of the expert appointed by the court and the opinion of the private expert submitted by the plaintiff, which the court resolved by appointing an expert body.

It was emphasized, that according to Section 206, Subsection 1 of the Act of 1952, the court shall determine the facts of the case on the basis of the evidence presented by the parties and the evidence gathered during the evidentiary procedure, and shall evaluate the evidence as a whole and judge it according to its conviction. As a consequence of the free deliberation of evidence, the discretion of the court includes both the assessment of the evidentiary value of each piece of evidence and the comparison with against the conduct of the parties or other participants in the proceedings. Accordingly, the court had to take a view on the basis of all the evidence, including the private expert opinion submitted by the plaintiff, as to whether his illness was causally linked to the acts or omissions of the defendant.

5. More recent decisions of the Supreme Court, provided in the 2010s, emphasized the opinion of the party-appointed expert, moving away completely from the legal solution, that had characterised the legal practice for decades. The jurisprudence has come a long way from the concept of assessing the private expert opinion as a personal statement of the party and has finally elevated it to a status of its own.

In Judicial Decree no. 186 of 2010, the court of first instance dissolved the marriage of the parties in its judgment, and placed their three minor children with the plaintiff, the father. The court based its decision on a psychological expert opinion, which stated, that the father seemed more appropriate to raise the children. The judgment was appealed by the defendant, the mother, and the court of second instance ordered partial taking of evidence, because in the meantime, changes occured in the legal relationship. According to the submitted private expert opinion, the children were always closer to their mother, and the defendant had a decisive role in their upbringing, so the court of second instance amended the judgment, and placed the children with the mother.

The plaintiff, the father filed for a review application against the judgment of the court of second instance, but the Supreme Court dismissed it. The Supreme

Court pointed out, that the opinion of a party-appointed expert is suitable for doubting the opinion of the officially appointed expert, furthermore the private expert opinion is a *sui generis* means of evidence, not mentioned in the Code of 1952, which the court is obliged to assess in the context of the free taking of evidence.

In the original proceedings of the Judicial Decree, published under no. 175 of 2012, the parties concluded a contract to produce a work, for the renovation of a house owned by the plaintiff. The defendant started the works but soon left the location without completing them and correcting the defects, alleged by the plaintiff. The plaintiff asked a private expert to give an expert opinion, who assessed the amount of the damage.

The court of first instance determined, that the opinion of the party-appointed expert could be assessed as a professional opinion, which had to be evaluated within the framework of the free taking of evidence. Consequently, having considered the contradictions between the opinion of the private and the officially appointed expert, the court essentially based its decision on the opinion of the party-appointed expert. However, in the context of the proceedings at second instance, the court did not take the private expert opinion into account on the ground, that the opinion of the party-appointed expert can only be considered as the professional statement of the party. Therefore, only the opinion of the expert appointed by the court can be assessed, and there is no possibility for the court to base its judgment on the opinion of a private expert on specialised topics, if there were doubts about it.

In its Decree, the Supreme Court pointed out, that the plaintiff had rightly claimed, that the opinion of the party-appointed expert obtained by him had been wrongly disregarded, in breach of the procedural rules on evidence. The opinion of a private expert is not simply a personal statement of the party on a specialised topic, but a sui generis means of evidence, not mentioned in Section 166, Subsection 1 of the Act of 1952, which the court is obliged to assess in the context of the free taking of evidence. The establishments of the opinion of the party-appointed expert may be capable of doubting the opinion of the expert appointed by the court, and deteriorating its evidentiary value. If there are contradictions between the opinion of the private and officially appointed expert, clarifications are have to be made to address any inconclusiveness. This can be done by a joint hearing of the officially appointed expert as an expert, and the private expert as a witness. If this is not successful, the court must appoint a new expert, at the request of the party presenting evidence.

Conclusion

It can be noted, that the Act of 1952 laid down the procedural rules applicable to the officially appointed expert as its fullest, and sought to regulate the whole process of expert evidence conducted by an expert appointed by the court.[26] Though,

[26] Nothing shows this better, than the fact, that in the case of the officially appointed expert, the Act CXXX of 2016 transposed several twists from the Code of 1952 into the current law.

since the employment of experts as a part of expert evidence is not limited to the employment of officially appointed experts in litigation, the Code of Civil Procedure has not proved to be thorough and complete. It lacked a key legal institution and left it to the courts to elaborate, which according to the specific nature of evidence, would undoubtedly have been indispensable to regulate it in the Act: private expert evidence.

Judicial practice has struggled to cope with this task to define the legal nature of the private expert and the assessment of his opinion in legal disputes. The examined judicial decrees show, that as a result, legal practice has taken five different approaches to the assessment of the opinion of the party-appointed expert. On this basis, the opinion of the private expert: is not an evidence, equalled to the personal statement, the professional opinion of the party; is indeed the personal statement, the professional opinion of the party, but must be assessed within evidence; a means of evidence, not specified by the Act of 1952, but it has to be taken into discretion; is an evidence in the legal dispute, so if it is contrary to the opinion of the officially appointed expert, then there are two opposite opinions, and, in pursuance of that, the joint hearing of the experts is necessary; and it is a *sui generis* means of evidence, not mentioned in Section 166, Subsection 1 of the Civil Procedure Code of 1952, which the court is obliged to assess in the context of the free taking of evidence.

The lack of legislation on private expert evidence and the confused, uncertain regulations and legal practice have led to the neccesity for a revision of expert evidence (and of the Act of 1952 as well). Firstly, the Concept[27] identified the need to reform expert evidence, which later became one of the cornerstones of the codification proceedings. The *Act CXXX of 2016* on the Code of Civil Procedure finally entered into force on the 1st January, 2018 and fundamentally changed the civil procedural law of our country – and the regulations governing expert evidence.

Under the provisions of the Code of 2016, the expert is a means of evidence, while his opinion is evidence.[28] It is declared, that the party producing evidence may choose between two mutually exclusive ways of taking expert evidence: either the court may appoint an expert on his motion (as a sub-case of the employment of an officially appointed expert, the Act also allows the use of an expert appointed in other proceedings), or the party may appoint an expert himself – this expert is going to be the party-appointed expert. It is important to note, that according to the regulations of the Code of Civil Procedure currently in force, the opinions of the officially and party-appointed expert are considered in the same context – they are assessed in the same circle in terms of evidentiary value. By arranging the party-

[27] Concept for a new Code of Civil Procedure – Concept adopted by the Government on the 14th of January, 2015.

[28] See: ASZÓDI László: Szakértők. In: Wopera Zsuzsa (szerk.): *A polgári perrendtartásról szóló 2016. évi CXXX. törvény magyarázata*. Wolters Kluwer Kiadó, Budapest, 2017, 405–410.

appointed expert by legal means, the Act of 2016 remedied the deficiencies of the Act of 1952.

As a result, it is statable, that the regulations regarding expert evidence of the Code currently in force are a huge advancement, compared with the Civil Procedure Code of 1952 – which is also obvious in legal practice. While the opposite views on the opinion of the party-appointed expert determined the legal practice, established by the Act of 1952, these are cannot be seen in the Code of Civil Procedure of 1952, currently in force. In fact, the system, developed by the Act of 2016, has proven to be effective and functioning well in the years that have passed since its entry into force, and the expert evidence itself is based on consistent, reasonable rules and efficiency.[29]

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[29] See: POMEISL András: A bizonyítás általános szabályai. In: Wopera Zsuzsa (szerk.): *Kommentár a polgári perrendtartásról szóló 2016. évi CXXX. törvényhez*. Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2017, 457–496.

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[19] BH1983. 233.

[20] BH1987. 411.

[21] BH1996. 102.

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[23] BDT2001. 181.

[24] BH2003. 17.

[25] BDT2003. 759.

[26] BDT2003. 780.

[27] BH2004. 59.

[28] EBH2006. 1465.

[29] BH2007. 192.

[30] BH2010. 169.

[31] BH2010. 186.

[32] KGD2012. 79.

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