

ASPECTS OF THE FUNCTION OF TECHNICAL CONSULTANTS IN CIVIL AND CRIMINAL PROCEEDINGS IN ITALY

Dr. **Jolanta Grębowiec-Baffoni**,

Centro Studi Economia e Diritto, Legnano (Milano),
Via Padova 5, 20025 Legnano, Milano, Italy,
<jolanta.grebowiecbaffoni@gmail.com>

Dr. **Pietro Pavone**,

Università degli Studi del Sannio,
Via Traiano 3, 82100 Benevento BN, Italy,
<dapietro1988@gmail.com>

Annotation

An expert is a natural person with an appropriate knowledge in a specific field that may be used by a court in cases requiring specific knowledge. In Italy, the expert institution, governed by the Code of Civil and Criminal Procedure, is divided into experts (ex officio technical consultants) and party experts (technical consultants of the parties). An ex officio expert is granted the status of a court assistant, while party experts are granted the status of technical defenders, integrating the advocates work. Legal norms provide for certain norms of the relationship between an ex officio expert and party experts, which follow the principles of adversarial and transparency. Such reports allow the ex officio expert to integrate his own research and deduction with the observations and reservations of the expert parties, in an effort to achieve objectivity.

Keywords: ex officio technical consultant, party technical consultant, expert preparation, legal standards, adversarial principle

Introduction

The judiciary, striving to learn the truth, as an indispensable factor necessary to make decisions objectively in accordance with the legal equality of every citizen, is obliged to thoroughly search for the truth about facts that may concern various areas of life. For this reason, the judiciary authorities use the knowledge of people specialized in a certain field, who do not necessarily have knowledge of the legal discipline, although their participation in the trial, due to the need to delve into specialist facts, is indispensable. All profession and professional sector requires special knowledge without exception, so every experienced specialist such as a qualified bricklayer or a neurosurgeon, can become a court expert, i. e. a person assisting the judiciary with his own

knowledge and experience.

In order to establish the truth, each country determines the method of appointing experts, taking into account all evidence, facts and circumstances.

As the history of law shows, specifying legislative norms defining the functions and scope of an expert is not an easy activity. It requires taking into account a number of elements in the already existing law and legislative regulations, with a particular arrangement of the participation of an expert (or experts in the process) with the separation of his functions from other participants in the proceedings. As a consequence, the expert is a specific character who becomes an important point of reference for the court, responsible for making decisions.

A different and more complex approach is required to regulate the position of an expert party whose activity turns out to be indispensable in defensive activities, because of the defensive function he performs, he needs a different, albeit equally important consideration of the court.

In Italy, for several decades, forensic and party experts have performed the function of technical consultants who, together with a logical division of roles, can participate in investigative activities, conduct separate research, which in turn, described in detail in the report along with the results achieved, become the basis for exchange of comments in adversarial proceedings.

The present position of an expert witness, equivalent to a defense attorney, has been achieved as a result of many years of searching for the best legal solutions, through a long trial and error path.

Development of the position and functions of an expert in Italy

In Italy, an expert is called *perito*, from the Latin *peritis*, meaning experienced, expert. This name also includes technical professions gained in secondary vocational schools and universities. In other words, a *perito* is a technician specialized in a certain field, possessing knowledge and special abilities necessary to perform specific activities.

The skills and abilities of a technician (*perito*) are represented by the so called *perizia*. *Perizia* is also defined as a report on the activities performed by the technician during testing and verification. *Perizia* or expertise represents also a detailed description of the control and research work of the technician that can be a concrete consultation and support activity for people who need such help¹.

Even at the turn of the nineteenth and twentieth centuries, the Code of

¹ Carnelluti, F. *Enciclopedia Italiana Treccani* : <http://www.treccani.it/enciclopedia/perito>

Italian Civil Procedure (Article 252) gave the same value to the testimony of a witness and an expert opinion, as a result of the expert was treated as a witness.

Failure to notice the fundamental difference between an expert opinion and a witness' testimony (while the judge observes the witness and inquires about the facts, the expert analyzes the facts themselves) sometimes resulted in a complete disregard of the expert's opinion, to the detriment of the course of the case. This state of affairs required correction, which was to be remedied by the Code of Criminal Procedure, which not only separated the role of an expert witness, but even opposed them (Art. 282 of the Code of Civil Procedure). However, this seemingly progressive change brought with it a lot of oversight, as the law does not mention the separation of the roles of a court expert from a party expert. Giving the same weight to expert opinions made by an *ex officio* expert and expert opinions made by expert parties which, for obvious reasons, could clearly deviate from the requirements of impartiality, made it difficult².

The consequences of this approach were particularly serious in criminal matters, which was addressed in the reform of 1913 in article 208³. The change consisted in the performance of the activities of an *ex officio* expert was limited to the investigative phase, i.e. to the preparatory proceedings, and his expertise was supplemented with the expert opinion of a party expert, which still did not constitute an appropriate solution in obtaining the truth.

Only in 1930, the legislator, in Art. 314 of the Code of Criminal Procedure, completely refrained from integrating the expertise of the court expert and party experts, although depending on the results of the expert opinion, the expert could support both the office of the judge and the party (article 314 et seq.)⁴.

The activity of the court expert was still limited to the preparatory proceedings, while the expert witness could perform activities outside the trial and his opinion could only be presented to the judge in writing. Due to this, the expert of the party was given the name of *perito extragiudiziale* or extrajudicial expert, which certainly indicated his position and his expertise role diminished in the trial.

The expert's specialization was difficult to define and raised doubts many times because of the fields of science required in the process did not exist. For example, this was the case of writing expertise (graphologists), for which calligraphy teachers, writers or even officials were appointed. And yet, without

² Chioyenda, G. (1923). *Principi di diritto processuale civile*. 84.

³ Chioyenda, G. (1923). *Principi di diritto processuale civile*. 84.

⁴ Ferrua P., Marzaduri E., Spangher G. (2013). *La prova penale*. 506.

diminishing the knowledge of each representatives of these professions, it is hard to find in them relevant information related to the neurophysiological and psychological writing of writing, carefully considered and particularly developed today. It is equally difficult to require from representatives of these professions adequate knowledge about the impact of certain covering agents on the paper, reacting with external factors, or even their composition. “Expert opinions” of documents performed by people who do not have appropriate knowledge in this field were usually limited to comparing the forms of letters, which, after all, could be easily changed or counterfeited. Due to numerous mistakes and the related wrong sentences, the trust in expert “calligraphers” has been decreased and unfortunately also extended to other areas of expertise.

The role of the appropriate specialization of an expert was noticed only when (first in Germany and, in turn, in Italy) the procedural facts required a real scientific research. However, while the court-appointed expert became an assistant to the court, the figure of the party expert still remained in the shadows⁵.

For this reason, further amendments to the provisions of the law were necessary, and this is how the criminal code defines the position of the expert of a party performing a defensive function, which in Art. 323 et seq. is defined as the “institution of the party’s technical advocate”, established to integrate the work of a regular or principal defense attorney. As a result, a party’s expert does not take an oath, unlike an ex officio expert (Articles 373 and 380 of the Criminal Code).

The same articles divide the function of experts into technicians conducting preparatory proceedings and experts supporting the office of judge.

An expert appointed by a court is still called a court expert, assuming that he supports the office of a judge, he is consequently elected by the office, although the choice of an expert in a civil trial may be agreed with the parties (Art.234 of the Code of Civil Procedure). The function of an expert witness requires him to take an oath to tell the truth. Providing untruth on the part of a court expert may result in severe penal consequences (Art. 373 of the Penal Code).

The modifications to the articles of the law were essential and developed: the technical support of the judge and the parties could be entrusted to one or more competent people. Also, the changes have gone so far that in case of technical support from the court, it was possible to investigate by several specialists,

⁵ Carnelluti, F. *Enciclopedia Italiana Treccani* : <http://www.treccani.it/enciclopedia/perito>

either individually or in a team.

The possibility of editing more expert opinions is provided for in Art. 269 of the Code of Civil Procedure, if a judge “does not find sufficient elements in the expert opinion to issue an opinion, he issues regulations regarding a new expert opinion”. The team report on the course of the research is provided for by Art. 252 of the Code of Civil Procedure, which specifies that the expertise is performed by one or three experts.

Current legislation categorically separates the functions of an expert from a witness (Article 252 of the Code of Civil Procedure), also in relation to the party’s expert, and referring to the individual tasks of the court expert and party’s expert, he refers to the provisions of the Penal Code of 1930, supplemented by proposals for the reform of the civil process from 1926⁶, giving a court expert the position of *consulentetecnico d’ufficio* (CTU), i.e. an ex officio technical consultant, while a party expert is attributed the position of *consulentetecnico di parte* (CTP), i. e. a party’s technical consultant (Art. 323 of the CCP).

This solution of the legislator, although it clearly distinguishes the roles of experts, does not diminish the function of a party expert, who is appointed by the party and then by the court in order to integrate the activities of the defense lawyer. Thus, the expert of a party becomes a technical defense attorney, unlike a court expert, he does not take an oath, and his criminal liability is precisely differentiated from an expert appointed by the judge’s office (Art. 373 and 380 of the Penal Code)⁷.

The activities of the ex officio technical consultant consist in conducting an investigation in order to resolve one or more issues in the case and issue an appropriate opinion. Article 270 of the Code of Civil Procedure states that the opinion of an ex officio expert is not obligatory for a judge to issue a judgment, as it is nothing else than a logical sequence of thinking of an expert who acts as an assistant and not a member of the judiciary board.

⁶ Bartolini, F. (2016). *Codice di procedura civile e leggi complementari. Prima edizione*. Aggiornato Alla Gazzetta Ufficiale. 210–211.

⁷ Article 373, relating to the submission of untrue facts by a party expert, provides that “an expert or interpreter who is appointed by a judicial authority to give a false opinion or interpretation or to find false facts shall be subject to the penalties laid down in Article 375; 377, 384 of the Code of Criminal Procedure “. The same article stipulates that an expert is prohibited from exercising his profession or art in addition to being prohibited from performing public functions. The articles of the law cited in this section provide for prison sentences of three years and up. On the other hand, the criminal activity of an expert party, consisting in intentionally rendering untruths and manipulating facts, is subject to Art. 380 of the Penal Code, which provides for the arrest by the judicial police of anyone caught in an intentional crime for which the law provides for a prison sentence of five to twenty years or a life sentence.

The ex officio expert therefore deals with factual issues that may be subject to the evidence examination. The functions of an expert witness are divided into a perceptive expert and a deducing expert. The perceptive expert is entrusted with the performance or assistance of activities⁸ whereas the deducing expert is entrusted with the evaluation of the evidence. Often, both functions are performed by the same person. (Art. 212 of the Code of Civil Procedure; Art. 326 of the Code of Criminal Procedure).

The right to perform activities in the case is obtained by an expert at the time of his appointment to perform the tasks specified by the judicial body. Such powers apply to both the expert witness (CTU) and party experts (CTP), as stipulated in Articles 323 of the Code of Criminal Procedure and 252 of the Code of Civil Procedure. A court expert is always selected by a judicial body, while the parties' experts are appointed by the parties and subsequently by the court.

Articles 228 and 229 of the Code of Criminal Procedure contain the purpose of a court expert activity at the procedural level, specifying his duties in relations with judge and parties, in order to guarantee the proper conduct of the investigation, taking into account the rights of the parties and the adversarial investigation⁹.

The judge performs a coordinating function in the activities, even if he does not issue instructions as to the technical methodology, although he may participate in them (which can be inferred from the interpretation of Article 228 "when technical activities take place without the presence of a judge"). His authority gives him the power and imposes on him the obligation to resolve any "issues related to the expert's powers and limitations of his appointment" (even though in no case may he interfere with activities or suspend them), as well as he authorizes the expert to read the files and documents presented by the parties. The documentation to be consulted by an expert is only limited to the acts at the disposal of the judge and it may be used as evidence.

This article has been integrated by Art. 76 of the Code of Criminal Procedure, which specifies that the provision of original evidence and other items to the expert is verbalized by the clerk of the office (possibly original documents may be obtained by the expert in the form of copies after the expert's preliminary examination, which applies to cases with the use of a written opinion, pursuant to Art. 75 of the Code of Criminal Procedure).

⁸ As, for example, assisting a physician during specific postmortem examinations.

⁹ Bruschetta, E., Maiga, M., Novelli, F. (2009). *Manuale del consulente tecnico e del perito*. 91.

The expert may ask the judge to authorize him to use the help of trusted assistants only for the purpose of “material activities, not implying assessments and opinions” (Bruschetta E. 2009, 92). The law prohibits an expert from entrusting the performance of activities or parts thereof to third parties, and if he finds during operational activities, the need to examine foreigners in his field or using devices that he does not have at his disposal, he is obliged to request the judge to transfer the examinations to specialists in different field and to laboratories having the appropriate facilities, or to be assigned the support of experts with specific knowledge in another field¹⁰.

The requirement to turn to the court with a request for support from other associates results from the expert’s subordination, even if the law does not provide for any procedural sanction if the expert uses the cooperation of other specialists on his own initiative, although the lack of such a request to the court may adversely affect the periodical expert assessment, with the consequences provided for Art. 231 of the CCP¹¹.

Thus, an ex officio expert becomes an assistant to the court, which authorizes him to carry out examinations in investigation area and obtain evidence needed in it, authorized by the judge. The work of a forensic expert is transparent and objective, in order to ensure impartiality. Also, a number of his activities are performed in the presence of party experts or lawyers. Such activities include, first of all, collecting, securing and describing research material. The date and place of the performance of these activities must be established by the court expert, who informs the experts¹². It is in the interest of the parties’ experts and defense lawyers to participate in security measures.

The parties’ experts assisting in collecting and securing evidence have the opportunity to familiarize themselves with their originals and obtain copies (photos or scans) of them in order to initiate their research necessary for the defense. When the activities are completed, a protocol of them carried out is drawn up and signed by those present. Therefore, party experts assisting the

¹⁰ Bruschetta, E., Maiga, M., Novelli, F. (2009). *Manuale del consulente tecnico e del perito*. 92.

¹¹ Article 231 of the Code of Criminal Procedure stipulates that 1) an expert may be replaced if he does not provide an opinion within the prescribed period or if he carries out the task entrusted to him in a negligent manner. 2) The judge, after hearing the expert, orders him to be replaced, except for situations beyond the expert’s control. 3) An expert who has been replaced due to failure to meet the deadline and not motivated by delay may be fined by a judge from 154 euros to 1.549 euros. 4) The expert may be replaced if he / she presents a declaration of refraining from activities or of rejecting them. 5) The replaced expert must immediately place at the judge’s disposal the documentation and results of operations carried out so far.

¹² Art. 191 et seq. of the CCP

work of an ex officio expert have the opportunity to familiarize themselves with the original evidence in order to conduct separate examinations¹³.

Technical consultant ex officio, within the time limit specified by the court, conducts preliminary examinations and informs both the court and the technical consultants of the parties who respond to the preliminary opinion of the ex officio expert and all his activities performed during the examination. “The technical consultation of the forensic expert and the technical reports of the expert parties are ontologically different. Technical consultation ex officio is carried out in accordance with the adversarial principles to which the technical consultants of the parties are entitled”¹⁴.

This moment is usually marked by the consent of one of the parties and the adversarial nature of the other. Both parties have the right to submit their own comments on the methodology used, the way of conducting research and the final opinion of the ex officio technical consultant.

Technical consultants of the parties submit comments and their own expertise¹⁵ from research to both judge and ex officio technical consultant. After reviewing expert opinions and parties comments, the court appoints the ex officio technical consultant the time needed to finally respond to their opinion.

¹³ Such a remark is very important, first of all, in relation to comparative literary studies, during which only graphic samples authorized by the court are allowed to study, because they guarantee their origin from a reliable source. Since the graphic material used for comparison, which does not have a guarantee of origin, may not be approved by the court, the court determines the sources that the technical consultant from the office may use. Collection of graphic samples may take place in court, however, most often these activities are performed in the office of an ex officio technical consultant, with appropriate conditions and tools for sampling, in the presence of expert parties or defense lawyers who supervise the methodological correctness of collecting, securing and describing materials. During these activities, the person submitting the graphic samples is provided with high physical and mental comfort, as well as the support of both the court expert and the expert party or defense attorney, as well as the time needed to obtain maximum emotional comfort. Collecting handwriting samples is a complex activity, the person submitting the material writes in different positions, with the right and lefthand, with different writing means and, depending on the case, on different surfaces (smooth, rough, low, high), etc. After the activity is completed, a protocol is prepared under which all present sign.

¹⁴ Soggi, A., Sandulli, P. (1997). *Manuale del nuovo processo tributario*. 37.

¹⁵ Technical consultants of the party in their expert opinions present the results of their own work carried out on evidence collected by a technical consultant ex officio. Sometimes, as is the case with written expert opinions, the party's technical consultants present their own additional evidence, although if it does not come from a reliable source (e.g. signatures made in the presence of an official and confirmed by the official's signature and seal), the court usually does not take it under attention.

Answers to court questions

The legislator intention expressed in Article 227 of the Code of Criminal Procedure was to privilege the expert's answer in oral form. In fact, the first point of this article states that "after the formalities related to the appointment of an expert are closed, he immediately takes the necessary steps related to verification and answers questions, providing the judge with a concise Opinion in an Oral Report". In judicial practice, however, situations deviating from this legislative norm are observed, which results from the need to familiarize with the subject of the case on the part of the court and experts.

This possibility is presented in the second point of this article, which provides that if an expert, due to the complexity of the issue, is unable to answer the judge's questions directly, he may ask the authority to be allowed to submit a written report and to set him an appropriate deadline for its preparation. The court may reject the expert's request and replace it with other experts or set a time limit for the preparation of the report together with the opinion, not exceeding ninety days.

The third point of the same article establishes that, "upon a reasoned request by an expert", in the event of particular complexity of the tests, the deadline for reporting the report may be extended to 30 days. The application may be submitted several times, although the overall period should not exceed six months.

The last point of article 227 of the Code of Criminal Procedure allows the expert to apply to the court for authorization to submit a written test report within a specified period, reserving such a possibility due to the need to explain the attached illustrations in writing, which gives him the opportunity to present the evidence in question and opinion motivation in adversarial proceedings¹⁶.

In line with this, Art. 508 of the Code of Criminal Procedure states that "a judge having an expert opinion ex officio, at the request of the parties, can also appoint a court expert to appear before the authority in order to explain his opinion"¹⁷. Pursuant to 501 of the Code of Criminal Procedure, an expert is called to answer the judge's questions and the parties' questions¹⁸.

If the presence of an expert is not possible, Art. 508, CCP provides for postponing the hearing to another date, not exceeding sixty days.

In practice, there are rarely cases that perfectly correspond to the

¹⁶ Bruschetta, E., Maiga, M., Novelli, F. (2009). *Manuale del consulente tecnico e del perito*. 90.

¹⁷ D'Adria, M., Fidelbo, G., Gallucci, E. (2008). *Codice di Procedura Penale – Giudizio e procedimento davanti al tribunale in composizione monocratica*. Vol VI. 152.

¹⁸ D'Adria, M., Fidelbo, G., Gallucci, E. (2008). *Codice di Procedura Penale – Giudizio e procedimento davanti al tribunale in composizione monocratica*. Vol VI. 147.

recommendations of the legislator, striving for the presence of an expert at a hearing. The expert is often answering the judge's questions in writing, similarly answering the parties' questions and objections, which is justified by various modifications of the jurisprudence (with particular reference to the intervention of the Constitutional Tribunal, which found that many norms in the "original" code were incorrect), and in many modifications of jurisprudence that almost completely changed the original configuration of the code (Bruschetta E. 2009, 91). Another reason for this is the inadequacy of the oral report in relation to the procedural requirements: "if we take into account that a judge must use information obtained from an expert in order to support his own decision, and therefore must refer to his reasoned opinion, it is obvious that he would be inclined to examine a written report, and that he would use the oral and direct report only in less complex cases and to a lesser extent"¹⁹.

This state of affairs also results from the obligation to approach each case objectively, which is associated with the need to maintain methodological canons, requiring extensive and comprehensive knowledge supported not only by expert knowledge, but also scientific literature and updated achievements in a given field, as well as the use of various techniques in using specialized laboratory instruments.

Therefore, the written report on the conducted research contains the final opinion, a detailed and complete protocol of the research carried out, listing all the tested items, each step of the activities, all the tools and materials used in the analysis, supported by scientific literature, explained with illustrations and photos from investigative phase.

Providing photos of the tested objects, and in particular their parts subjected to analysis, the precise indication of the technology and research methodology used in the expert opinion, is extremely important in order to enable the litigants to carry out identical tests and their comparisons, in accordance with the principle of objectivity and repeatability.

Article 134 of the Code of Criminal Procedure specifies the method of preparing a report that may be submitted in a complete or synthetic form, and which must be made with the use of a mechanical writing tool. In exceptional situations, it is allowed to execute the protocol in handwriting. Phonographic and photographic reproduction is made both in the total report and in the synthesis, with the possibility of including an audiovisual reproduction if the form and quality of phonograms and photographs are not sufficient.

¹⁹ Bruschetta, E., Maiga, M., Novelli, F. (2009). *Manuale del consulente tecnico e del perito*. 91.

The report on the activities should include place date and time of the start and end of the tests, personal data of the intervening persons, indication and description of the case and the things tested. It should be noted the possible absence of people who should assist in the activities, describe the activities performed by the expert and his assistants, the results of these activities, and all the important information obtained in the case.

All phonographic, audiovisual, photographic recordings and descriptions are attached to the procedure files.

Research reports, when supported by scientific literature that motivate the performance of specific activities and conclusions, show the value of the investigation and give evidence to the expertise. So, the principle of preparing the report is to use terminology accessible to any person who is not a specialist in a given field.

Experts' adversarial correspondence

Despite the separate functions of an expert witness and party experts, where the purpose of the expert witness is to find out and show the truth, and the parties' experts try to prove the case of their own clients, some phases of the investigation are performed jointly to ensure that tests are carried out on identical materials using similar criteria. Each expert's research develops in a different direction; while the forensic expert is required to conduct extensive research with objectivity, thus revealing all, also contradictory, phenomena arising from the investigation it is trying to solve and giving a definitive, objective answer, the parties' experts try to find as much evidence as possible in favor of their clients.

The experts of the parties may communicate their observations to the *ex officio* expert at the stage of preliminary examinations, to which the *ex officio* expert is obliged to give his opinion in the preliminary opinion, which he submits to the court and to the parties' experts. After hearing the preliminary opinion of a court expert, the parties' experts have the right to be adversarial, expressing reservations and comments, supported by their own research with references to professional literature, also in writing.

The final opinion is given by the court expert after reviewing the results achieved by the parties' experts, observing their comments and objections and motivating his own decision. The parties' experts prepare separated opinions and submit them to the court.

Certainly, such an extensive "adversarial correspondence" of experts (using certified mail) makes the procedural activities longer, and the reports on the

activities are very extensive, although it is assumed that such proceedings result from the awareness of the possibility of mistakes and the need to identify the truth.

The necessity to consult an ex officio expert and the parties' experts results from striving for objectivity, which should be achieved by a court expert by observing his own work and that of the parties' experts. Even with a very qualified expert, the possibility of a mistake cannot be ruled out, because each case is different and requires a separated approach. Personal work experience and knowledge may lead to routine, and the factor of subjective perception, which is one of the causes of mistakes and supplemented by the observations of other experts, allows for the extension of the scope of one's own observations, cannot be ignored. "In expert psychology, certain regularities are found in issuing categorical opinions"²⁰ (Malewski H. 2002, 943). According to the observations of Henryk Malewski and Anele Žalkauskiene, the highest intensity of categorical opinions occurs between the 3rd and 10th year of professional work of an expert, followed by the fear of making a mistake, with a sense of danger of correctly presenting the opinion. "These negative factors, often on the sub-conscious level, affect the expert's motivation, substantive examination of the problem and presenting an objective conclusion becomes a secondary goal, and the main goal is not losing face"²¹.

The possibility to submit objections by the parties' experts during "adversarial correspondence" gives the ex officio expert the opportunity to observe and reflect on the course of his own proceedings, to take into account other points of view and respond to them.

Requirements for inclusion on the list of court experts in Italy

A list of Technical Consultants of the Judicial Office is established at every Court in Italy. It is a register in which there are recorded people with specific professional and technical competences, who may be entrusted by the judge with the consultations, valuations and opinions necessary to issue a judgment. The consultant, therefore, does not implement the decision, but issues an assessment or opinion.

People with certain technical competence in specific fields may be enrolled in the register, the essential condition being membership of the relevant

²⁰ Malewski, H., Žalkauskiene, A. (2002). Przyczyny błędów w ekspertyzie pismoznawczej. In *Problematyka z dowodu ekspertyzy dokumentów*, a cura di Z. Kegel. 943.

²¹ Malewski, H., Žalkauskiene, A. (2002). Przyczyny błędów w ekspertyzie pismoznawczej. In *Problematyka z dowodu ekspertyzy dokumentów*, a cura di Z. Kegel. 943–944.

national professional associations, which in turn define membership requirements. Membership in such associations is conditioned by documented experience and professional qualifications or examinations carried out by institutions authorized by the Ministry of Justice²². The longevity of membership in associations depends on the scores obtained during the year. Points that allow you to extend your membership can be obtained during courses and trainings supplementing professional knowledge or during conferences; also, points can be earned for specialist publications in the field of an expert witness or specific professional activity. Each association determines its own and separated method of obtaining the points necessary to continue practicing the profession.

People who work in workplaces are in an advantageous situation because they have the opportunity to obtain the required scores during compulsory training courses organized by the institutions where they work.

Enrollment on the list of experts is as a result conditional on having professional qualifications and belonging to the appropriate professional association accredited by the Ministry of Justice, which is a guarantee of high professional qualifications. Testimonials of special technical competences and professional experience may also be useful.

A person applying to be entered the list of experts submits an application to the President of the Court with a tax stamp with the necessary documents certifying his special abilities, detailing the civil or criminal scope. The decision to enter the list of experts is made by a commission chaired by the President of the court. If the commission's decision to enter the list of experts is positive, the candidate, after paying the agreed fee, may be entered one or both lists, only in one court in the district in which he is registered.

The President of the Court, heading the commission, has the power to remove the expert from the list in the event of failure to perform the duties of the expert²³.

The specifics of an expert in handwriting and document research in Italy

People who perform the so-called liberal professions, such as journal research experts, psychologists, appraisers or artists, are subject to separate ministerial scoring decisions, which are enforced by individual professional

²² *Portale CTU*: <http://www.ilportaledelctu.it/come-si-diventa-consulenti-tecnici-d-ufficio-del-giudice.html>

²³ *Portale CTU*: <http://www.ilportaledelctu.it/come-si-diventa-consulenti-tecnici-d-ufficio-del-giudice.html>

associations.

In the field of handwriting and document research in Italy, there is the position of a graphologist specialized in university studies or in higher education institutions preparing for the profession of graphologist with a three-year curriculum. It should be noted that the preparation of graphology covers several areas of consultation in the field of handwriting analysis in the following areas: 1) family consultation; 2) consultation of developmental age; 3) school and vocational counseling; 4) expert opinions of the letter in the judicial scope.

Consultations conducted on the basis of a graphological analysis of personality are integrated with psychological and pedagogical counseling and find a special place in schools and family and vocational counseling centers. Writing research for the purposes of law is carried out just for identification and comparative purposes. As a consequence, a graphologist performing expertise in the judicial area only uses his knowledge to determine the author of a specific entry.

The comprehensive development of the field of graphology, also in the judicial field, is caused by the well-developed school of graphology by Girolamo Moretti, who established a method of examining writing on the basis of the observation of graphic movement, referring to the laws of physiology of movement. Moretti's school does not exclude other schools of graphology and uses their achievements, with particular emphasis on the Swiss method of Max Pulver and the French Crepieux Jamin.

The graphology school achievements made it possible to replace the previous method of calligraphy research, which was based on comparing the appearance of letters themselves, without taking into account the dynamics of changes in the handwriting related to its development and age, pathology, emotions and general conditions. In other words, calligraphy research carried out mainly by calligraphers or calligraphy teachers, did not take into account the "live" part of the handwriting, i.e. all elements of movement (impossible to remake or copy), but only the shape of individual letters (possible to modify or copy).

Notwithstanding the departure from practicing calligraphy expertise, a certain tendency in the use of terminology from the past is still observed today and the term "calligraphy expertise" can often be encountered on the part of the court and lawyers, despite the fact that Legislative Decree No. 271 of July 28, 1989, it was replaced by the definition of "handwriting analysis and comparison".

Another method of examining a handwriting, used until recently in the judicial field, is the graphometric method, which is based on very precise metric

rules, i.e. on the use of more quantitative than qualitative techniques that analyze the static character of the handwriting, not its movement. Nevertheless, this research method was excluded due to the lack of taking into account an important element of dynamic changes of the writing.

Another advanced method of studying a handwriting is the graphonomic method developed on the basis of scientific achievements and based on the signaling-descriptive technique. Although the method takes the movement of the writing into account, it does not give any value to the psychological and neurophysiological aspects of the writer. It is true that, in the judicial assessment, the psychodynamic image of the author of the letter is not made, but the knowledge of the psychodynamic and neurophysiological aspects of a graphic gesture, necessary in the graphological method, allows even the most precise movements to be compared, and thus lets to understand their etiology and logic in order to compare or study the graphic identity .

Accredited preparatory schools for the profession of graphologist are recognized by the Italian Association of Graphologists and the Association of Professional Graphologists. Both organizations, in accordance with the Legislative Decree 206 of 2007, signed by the Minister of Justice and the Minister of Community Policies, on October 4, 2010 were entered the list of Professional Associations.

After completing graphology studies at a school preparing for the profession of a graphologist, during which students gain theoretical and practical knowledge also from technical examination of documents, graduates have the opportunity to take the exam in the aforementioned associations, which is a condition for entering the list of court experts. The listed exam does not apply to university graduates preparing graphologists.

An important step forward with regard to graphological expertise used in civil and criminal cases is the continuous and dynamic development of science and technical professions provided by the legislator, which not only fosters the development of forensic science, but also facilitates criminal activity (in accordance with the motto that the officer should always be a step ahead in the competition with the offender). Actually, aiming at continuous education and supplementing knowledge by experts, the draft Act 1378 Art. 5 concerning expert journalists, provides that every forensic graphologist is obliged to constantly learn by attending specialization courses, postgraduate studies in writing research at universities selected and accredited by the Ministry of Justice. Experts are required to attend just two courses a year or one postgraduate course related to their profession or law. In the event of failure to fulfill this

obligation, it is planned to organize courses lasting no less than fifteen hours over two semesters, organized approximately by five specialists, of which at least three can document fifteen years of ex officio technical consultation experience. Points can also be obtained through publications, active participation in conferences and teaching a profession.

Similar requirements are imposed on experts from other professions, depending on their specialization, and on lawyers.

Although the 2010 decree is an important turning point and aims at new standards for the selection of court experts in the field of written examination, it has not yet resolved the problem of verifying the skills of experts entered in the relevant registers before the decree comes into force. It is true that the aforementioned associations are responsible for conducting training and further training courses; it is true that Art. 5 of draft law 1378 provides for the obligation to improve and update the skills of chartered graphologists by attending courses, conducting research, publishing and teaching²⁴, however, court experts entered the court registers before 2010 (when it was possible to register as a graphologist after any private course, even several weeks), continue to renew their registrations on the lists of experts, not on the basis of acquired updated and properly documented skills, but based on their previous activities as graphologists in the same courts. The application of this criterion, which is certainly insufficient, is not able to assess the correctness of expert reports carried out in

²⁴ Section 5 of Bill 1378 (Professional Update); 1) Each forensic graphologist is required to conduct ongoing updating activity by attending specialized or postgraduate courses in forensic graphology at schools selected and accredited by the Ministry of Justice, with the obligation to attend at least two courses annually or in one postgraduate course; 2) If classes to update the knowledge referred to in section 1 are not possible, there are 15-hour updating courses spread over two semesters, conducted by at least five specialists in graphology, of which at least three have been entered on the list of experts for at least fifteen years, as referred to in art. 4; 3). The courses referred to in para. 2, together with related programs, the names of participants, teachers and students as well as an indication of the locations of the courses themselves are submitted to the president of the court competent for the area at least three months before their commencement; 4) At the end of the classes, the report on the training sessions conducted with the signatures of attendance by teachers and students is handed over to the president of the competent court; 5) each lecturer is obliged to attend classes in subjects that are not included in his teaching, conducted by other lecturers. 4) At the end of the classes, the report on the training sessions conducted with the signatures of attendance by teachers and students is handed over to the president of the competent court; 5) each lecturer is obliged to attend classes in subjects that are not included in his teaching, conducted by other lecturers. 4) At the end of the classes, the report on the training sessions conducted with the signatures of attendance by teachers and students is handed over to the president of the competent court; 5) each lecturer is obliged to attend classes in subjects that are not included in his teaching, conducted by other lecturers.

the past, and it cannot guarantee the correctness of their opinions in the future.

Conclusions

The participation of a court expert in a case is an important factor in the proceedings, as the specialist's knowledge and experience are to guarantee knowledge of the truth and objectivity, which may be used by a judge in issuing a judgment. In fact, the term 'ex officio technical consultant', used in Italy to describe a court expert, reflects the meaning of a trustworthy specialist and indicates the authority conferred on him. From the legal point of view, if the necessary striving to constantly improve the qualifications of experts results from concern for the emergence of the truth and issuing a correct judgment, then from the social point of view it is associated with the need for a sense of security of people who trust in the judiciary.

Another important role is played by the experts of the parties, as technical defenders, supervising the safety of their clients and also the correctness of the investigation conducted by an ex officio technical consultant.

In fact, mutual consultation of an ex officio expert and party experts in court proceedings turns out to be a beneficial practice for an ex officio expert who, after reviewing the comments of other experts, has the opportunity to respond to his own actions and consider possible other solutions favorable to the issuing of an opinion, with the observance of objectivity requirements. The adversarial phase between experts, which can be viewed by the court and defense lawyers, according to the principle of transparency, is the stage in which an expert ex officio identifies the truth of the court. The natural difference in the positions of the expert parties, resulting from the clients' defense strategies, gives the ex officio technical consultant the opportunity to consider additional observations or reservations indicated by the expert parties, and to respond to them.

Anticipating the possibility of cooperation and confrontation between experts, the Italian legislator sought to reduce the possibility of errors that may result from various reasons, including a subjective factor subconsciously influencing the expert's work. Despite the extensive knowledge of experts, each procedural case is different and requires a different approach and new solutions. For this reason, documented experience, qualifications and continuous training of experts is an essential condition for the performance of the expert's function.

The high requirements of the judiciary imposed on experts also result from the continuous progress of science and technology, new achievements

in individual fields, indispensable in investigative investigations, and the need to guarantee high competence of experts, correctness of tests and their results.

TECHNINIŲ RAŠYSENOS TYRIMO KONSULTANTŲ VEIKLOS YPATUMAI CIVILINIAME IR BAUDŽIAMOJE PROCESE ITALIJOJE

**Jolanta Grębowiec-Baffoni,
Pietro Pavone**

Santrauka

Ekspertas – fizinis asmuo, turintis atitinkamų tam tikros srities žinių, kurio-
mis teismas gali pasinaudoti specialiuųjų žinių reikalaujančiose bylose. Italijoje
ekspertų institutas, sutinkamas Civilinio ir baudžiamojo proceso kodeksuose,
yra dvejopo pobūdžio – ekspertas (*ex officio* techninis konsultantas) ir proceso
šalies ekspertas (šalių techninis konsultantas). *Ex officio* ekspertui suteikiamas
teismo padėjėjo statusas, šalies ekspertams – techninio gynėjo, integruojančio
advokato darbą, statusas. Teisės normos numato tam tikras *ex officio* eksperto
ir šalies ekspertų santykių normas, kurios vadovaujasi rungimosi ir skaidrumo
principais. Tokios ataskaitos leidžia *ex officio* ekspertui integruoti savo tyrimą
ir išvadą su ekspertų šalių pastabomis ir išlygomis, siekiant objektyvumo.

Raktiniai žodžiai: *ex officio* techninis konsultantas, šalies ekspertas, pasi-
rengimas tyrimui, teisiniai standartai, rungimosi principas.