

ERADICATING SUPERFLUOUS EXPERTISE TO INCREASE EFFICIENCY OF TRIALS & IMPROVE QUALITY OF EXPERT WITNESS OPINIONS

Courts are overwhelmed with cases where respondent is a state / state entity which does not use its trial rights, does not supply evidence nor builds an adequate defence. To render a verdict against such a respondent courts often call an expert witness even if such expertise is superfluous.

In addition, most of these cases should not even be received by the court. These cases should be settled before trial by public defenders / legal officers.

STRAY DOG BITE



To resolve a damage claim for a stray dog bite, a court needs to schedule at least four hearings and call two expert witnesses. One expert witness should be a doctor that would assess the degree of physical injury. The other expert witness is a physiatrist that will determine the emotional suffering and fear at the time of the bite. These two experts are needed to evaluate the total value of the damage claim.

Adjudication is expected within two years. It is certain that the claimant will win the dispute. Awarded damages are usually not more than RSD 100,000. Total trial costs are higher or at best close to the value of damages awarded. The respondent is ordered to pay all trial costs.

Judges often give unclear and even wrong instructions on the content of the expert witness opinion



There is a widespread practice to request an expert witness to review the entire case files and give opinions on credibility of submitted witness statements.

Courts in Serbia often request the expert witnesses to opine on questions of law.



Frequently, expert witnesses opine on whether there is a legal basis for a claim or whether maturity of debt has occurred.

KEY RECOMMENDATIONS



Courts should receive only cases where judicial scrutiny brings added value and is justified in cost. **Settlement commissions' and public defenders' work should be tightly monitored.**



Through decisional practice, higher instance courts should support the first instance courts in using the burden of proof rules and deciding to the detriment of the party who has failed to supply evidence (be it a state defendant or not). **Expert witnesses should not be called where superfluous.**



Procedural laws should limit the number of expert witnesses which could be used in trial to examine a specific issue.



Improve training of judges and prosecutors. Judges and prosecutors should be trained on some of the most common expertise used in trial. For example, basic classes on reading the financial statements or calculation of the default interest rate would be useful for commercial court judges.

ACTIVITY & AUTHORITY RESPONSIBLE FOR IMPLEMENTATION:

HIGHER INSTANCE COURTS



- Developing a decisional practice which would support first instance courts when dismissing superfluous expertise.

SUPREME CASSATION COURT



- Consider adopting an interpretative opinion which would provide clarity on when using expert witness statements as evidence is appropriate and when they should be dismissed.

MINISTRY OF JUSTICE



- Working with other state bodies and public defenders to proactively settle out of court and monitor success rates of public defenders/state attorneys at trial;



- Develop amendments to the CPC and CrPC to limit the number of expert witnesses which could be used in trial to examine a specific issue.

JUDICIAL ACADEMY



- Organize trainings for judges and prosecutors.

