

The Role of the Expert Witness in Criminal Proceedings in the Continental European Legal System

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The factual circumstances and forms of evidence in criminal proceedings have become increasingly complex, often touching upon subject areas where the participants in the trial reach the limits of their own knowledge. The range of topics is vast—extending from relatively straightforward blood-alcohol calculations to more difficult questions regarding criminal responsibility in the context of psychiatric diagnoses, accident reconstruction, and issues of document authorship or complex phonetic analysis. The potential subject matter is virtually endless. To answer these questions—some of which are decisive for the outcome of the trial—law enforcement authorities and courts rely on experts to convey the necessary specialized knowledge to the parties involved.

German criminal procedure is governed by the principle of official investigation (*Amtsermittlungsgrundsatz*). Under Section 244, Paragraph 2 of the Code of Criminal Procedure, the court is required to investigate the facts of the case *ex officio* (on its own initiative). If the court requires assistance in areas demanding expert knowledge, it calls upon expert witnesses. In this context, the expert's role is not merely that of an "assistant"; rather, if the expert reports on their own observations, they may also act as a (specialist) witness.

In principle, there are at least three ways an expert can be commissioned to provide an assessment in criminal proceedings: by the court, by the public prosecutor's office, and—less commonly known—by the defense. These various methods will be outlined with reference to the relevant statutory provisions.

This contribution will focus on the defense perspective on expert reports. It will specifically address the – somewhat complex – process by which the defense can introduce an additional expert of its own choosing into the criminal proceedings. The concept of an expert "self-commissioning" (or unilaterally engaging an expert) can be an effective means – alongside the "court-appointed" expert – of compelling the court to hear an additional expert.