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## What do Court-appointed experts have in common with Caesar's wife?

Miquel Montaña (Clifford Chance) · Thursday, May 19th, 2011

In countries where Judges are not trained in the technical field of the invention, they need experts to help them understand the factual aspects of the case. According to Spanish law, these experts may be appointed by the parties or by the Court, upon request by either of the parties. By law, there are circumstances that would clearly prevent an expert from accepting to act as a Court-appointed expert (being a relative of one of the parties or their lawyers, financial dependence, etc). However, there may be other circumstances not explicitly set out in the law that may cast a shadow of doubt on the expert's impartiality. The comment that follows is an example of this type of circumstance.

While Professor X was acting as a Court-appointed expert in a patent case relating to gabapentin, he was retained as expert by the firm that was representing the defendant in the gabapentin case to advise them in relation to a different case dealing with amlodipine. For example, Professor X would accompany the lawyers of the defendant in meetings with the expert appointed by the Court in the amlodipine case. In addition, in the course of the proceedings, it turned out that Professor X was listed as a co-inventor, together with the owner of the defendant company, in a patent relating to an active ingredient with indications similar to those of gabapentin. In view of these facts, the plaintiff asked the Court of First Instance to remove Professor X from the post of Court-appointed expert and appoint another expert. The Court of First instance rejected this on the grounds that although, in the Judge's opinion, Professor X's relationship with the defendant was "unfortunate", it was insufficient to cast doubts on his impartiality.

When the case reached the second instance level, the Court of Appeal of Barcelona (Section 15) took a much more stringent view. In its judgment of 17 May 2006, the Court asked itself: What else would the Judge of First Instance have needed, to at least have doubts as to the Court-appointed expert's possible lack of impartiality? So the Court of Appeal of Barcelona (Section 15) completely ignored the Court-appointed expert's opinion in its judgment, which on 18 May 2010 was confirmed by the Supreme Court, highlighting that it was completely reasonable for the Court of Appeal to have ignored the opinions of this expert in order to avoid any uncertainty regarding the possible contamination of an expert's opinion.

So the lesson from this case is clear: Court-appointed experts, like Caesar's wife, must be above suspicion.

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