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INVOLVEMENT OF A LEGAL EXPERT IN A COMMERCIAL PROCESS IN UKRAINE

ЗАЛУЧЕННЯ ЕКСПЕРТА З ПИТАНЬ ПРАВА У ГОСПОДАРСЬКИЙ ПРОЦЕС В УКРАЇНІ

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A person who has a scientific degree and is a recognized specialist in the field of law may be involved as a legal expert (Part 1 of Article 70 of the Code Of Commercial Procedure Of Ukraine) [1].

A legal expert has a different procedural status than a judicial expert.

The issues that are the subject of a legal expert's opinion are, by their nature, those issues to which proper, comprehensive and substantiated answers must be provided using scientific means and modern achievements of legal science [2, p. 229].

A practical problem that arises when involving a legal expert is establishing the compliance of such a person with the requirements for an “scientific degree” and the status of a “recognized specialist”.

Studying this issue, the scientific literature [3, p. 112] draws attention to the fact that the Law of Ukraine On Higher Education of 01.07.2014 [4] defines that the academic degrees in Ukraine are: Doctor of Philosophy / Doctor of Arts; Doctor of Sciences. According to the legislation in force at the time of the entry into force of the Law of Ukraine On Higher Education, the academic degrees are Candidate of Sciences and Doctor of Sciences. According to clause 8, part 2 of the Final and Transitional Provisions of the Law of Ukraine On Higher Education, the academic degree of Candidate of Sciences after the entry into force of this Law is equated to the academic degree of Doctor of Philosophy. Documents confirming the acquisition by a person of the academic degree of Doctor of Philosophy / Doctor of Arts or Doctor of Sciences are the diploma of Doctor of Philosophy / Doctor of Arts, Doctor of Sciences, relatively.

Since we are talking about an expert in legal matters, it is obvious that the academic degree should be in the relevant legal specialty.

The national legislation also does not disclose the content of the legal construct “recognized expert” in legal matters. It seems that when the court makes a decision on the admission of such an expert to participate in the case and the inclusion of his opinion in the case materials, it is worth taking into account his experience of scientific work in the necessary field of law, the availability of scientific publications, etc.

The opinion of legal expert (Articles 108–109 of the Code Of Commercial Procedure Of Ukraine) is not evidence, is of an auxiliary (advisory) nature and is not binding on the court.

In one of the cassation appeals considered by the Commercial Court of Supreme Court, the party noted that “the legal justification of the decision of the courts of first and appellate instance is completely refuted” by the comprehensive Opinion of the law experts, which was submitted to the Commercial Court of Supreme Court. The court responded to this statement as follows: first of all, it drew attention to the provisions of Articles 108 and 109 of the Code Of Commercial Procedure Of Ukraine on the non-evidentiary nature of the opinion and the fact that the court independently draws conclusions on certain issues. The opinion of legal experts is not a sufficient basis for departing from the legal conclusions of the Supreme Court and cannot take on the function of interpreting the norms of law when resolving disputes [5].

A legal expert has the right to payment for services and compensation for expenses related to a summons to court, if the court deems it necessary to carry out such a summons. It should be noted that the procedure for compensation for expenses related to the involvement of a legal expert is not sufficiently defined.

General provisions on court expenses are contained in Chapter 8, Section 1 of the Code Of Commercial Procedure Of Ukraine, which, among other things, defines the expenses related to the involvement (summoning) of witnesses, experts, specialists, translators, and conducting expert examinations (Article 127 of the Code Of Commercial Procedure Of Ukraine). Of course, the procedural status of a legal expert is significantly different from the status of a court expert. However, consultative participation in a commercial process is inherent in a specialist, which did not prevent the legislator from taking care of establishing the procedure for compensation for his participation. It seems that in order to comply with the principle of legal certainty, it is advisable to amend Article 127 of the Code Of Commercial Procedure Of Ukraine to provide that court expenses also include expenses related to the involvement of a legal expert.

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