

## SECTION 5. SCIENTIFIC CONCLUSION, LEGAL EXPERT OPINION, FORENSIC ANALYSIS

**LUTSYUK P. S.**

Member of the High Qualifications Commission of Judges of Ukraine,  
Doctor of Law, Honored Lawyer of Ukraine

### SCIENTIFIC CONCLUSION IN THE FIELD OF LAW

**Key words:** *scientific opinion, Constitutional Court, Scientific conclusions.*

The term «scientific opinion in the field of law» is not found in the procedural codes or case law, as opposed to the term «expert opinion in the field of law». However, its absence in legislative acts does not mean absence in the field of jurisprudence. In addition, the scientific conclusion has a significant auxiliary value for the proper administration of justice.

Laws of Ukraine «On the Constitutional Court of Ukraine» and «On the Judiciary and Status of Judges» still define the concept of «scientific conclusion». At the Supreme Court and the Constitutional Court of Ukraine, according to the law, scientific advisory councils are formed from highly qualified lawyers whose purpose is to prepare scientific opinions on the activities of the Constitutional (Supreme) Court, which require scientific support.

In accordance with the provisions of the Scientific Advisory Board of the Supreme Court, approved by the Resolution of the Plenum of the Supreme Court of February 2, 2018, No. 1, its powers include, inter alia:

- preparation of scientific conclusions regarding the interpretation and application of the law;
- participation in the preparation of draft generalizations of the practice of courts applying the rules of material and procedural law in order to ensure their uniform application during the consideration of cases;
- preliminary consideration of draft resolutions of the Plenary Session of the Supreme Court regarding the provision of advisory explanations on the application of the laws of Ukraine by the courts during the consideration of cases;
- preliminary consideration of the draft conclusions of the Plenary Session of the Supreme Court concerning draft legislative acts relating to the judicial system, judicial proceedings, the status of judges, execution of court decisions and other issues related to the functioning of the system of judicial system of Ukraine;

– preliminary consideration of draft constitutional petitions of the Supreme Court to the Constitutional Court of Ukraine regarding the constitutionality of laws and other legal acts, as well as on the official interpretation of the Constitution of Ukraine;

– preliminary consideration of other issues of the Supreme Court, the preparation of which requires scientific support.

As we see, the scientific findings of the above-mentioned Scientific Advisory Board can be applied in a wide range of law enforcement activities of the Supreme Court.

Thus, we can conclude that highly skilled lawyers working in the above mentioned scientific advisory boards actually perform the functions of legal experts in the cassation and constitutional courts.

Scientific conclusions may also be given after the corresponding request for their receipt. Examples of involving internal specialized bodies and organizations to assist the courts of the highest judicial institutions of Ukraine include the following. The Constitutional Court of Ukraine, often sending relevant inquiries to leading law schools and scientific institutions, receives conclusions that are usually in the form of a conclusion of a scientific and legal examination conducted in accordance with the Law of Ukraine «On Scientific and Scientific and Technical Expertise» [1].

As an example of taking into account scientific conclusions in law enforcement activities, one can refer the decision of the Constitutional Court of Ukraine of February 5, 2013 in the case of the constitutional appeals of the Limited Liability Company «Lichtner Beton Lviv» concerning the official interpretation of the provisions of the fourth paragraph of Article 58, part one of Article 64 of the Law of Ukraine «On business associations». In the above mentioned decision the positions of scientists of the Institute of Economic and Legal Studies of the National Academy of Sciences of Ukraine, the Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, the Faculty of Law of the Taras Shevchenko National University of Kyiv, the National University «Law Academy of Ukraine named after Yaroslav Mudryi», the Faculty of Law of the State Higher Educational Institution «Vadym Hetman Kyiv National Economic University», Faculty of Law of Ternopil National Economic University.

A striking example of the scientific conclusion in the field of law is the scientific conclusion regarding the discretionary power of the subject of power and judicial control over its implementation, prepared on the instructions of the Chairman of the Court of Cassation Administrative Court in the Supreme Court M. Smokovych [2].

The above-mentioned conclusion examines the actual problems of judicial practice, which until now have no unified approach to their solution:

1. How to determine the limits of discretionary powers of the subject of authority?

2. How to determine the limits of judicial control over the implementation of discretionary powers by the subject of authority?

Mentions about the possibility of using scientific legal conclusions are contained in international law. Thus, the European Court of Human Rights

indicates that in order to clarify the content of legal norms, it is necessary to take into account the results of doctrinal (scientific) interpretation. It should be noted that the ECHR in the *Garnaga v. Ukraine* decision referred to the scientific and practical commentary of the Family Code of Ukraine on the possibility of applying a similarity of law in the case of a person's desire to change his patronymic, although Ukrainian legislation did not provide for such a possibility.

Article 38 (1) (d) of the Statute of the International Court of Justice states that the court should apply the judgments and labor of the most skilled scientists as an additional means of determining the principle according to which the case should be resolved. The provisions of the International Commercial Court contain a provision that specifies the need to take into account the positions of specialists in the field of law when making decisions in court cases.

The literature raises the question of how the judge's inclusion of scientific findings is combined with the principle of "jus novit curia"?[3] In our opinion, the main purpose of the scientific conclusion in the field of law is to assist the judge in resolving the issues of the application of law, the resolution of which requires a systematic approach.

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