

References:

1. Einstein, A 1918, *Motives for Research*, trans. S. Bargmann, Crown, New York.
2. Hoecke, MV 2011, *Methodologies of Legal Research*, Hart Publishing, Oxford and Portland, Oregon.
3. Kuzmin, E 2016, 'Dostup do zarubizhnykh elektronnykh resursiv yak zaporuka yakosti naukovykh doslidzhen', *Elektronnyi repozytarii Natsionalnoho universytetu «Odeska yurydychna akademiia» (eNUOLAIR)*, perehliano 12 travnia 2019, <http://dspace.onua.edu.ua/handle/11300/6466>.
4. Organizatsiya Obyedinennykh Natsiy (OON) 1993, *Kratkoye izlozheniye resheniy, konsultativnykh zaklyucheniy i postanovleniy Mezhdunarodnogo Suda, 1948-1991*, United Nations, Nyu-York.
5. Streltsov, YeL 2016, 'Skladni suchasni protsesy intehratsii mizhnarodnoho, zarubizhnoho ta natsionalnoho zakonodavstv', *Visnyk Kryminolohichnoi asotsiatsii Ukrainy*, № 1, s. 42-53.
6. CASE OF BÖNISCH v. AUSTRIA [1985] (ECHR)
7. CASE OF BRANDSTETTER v. AUSTRIA [1991] (ECHR)

GOLUBIEVA N. Y.

National University «Odesa Law Academy»,
Head of the Department of Civil Procedure,
Doctor of Law, Professor

LEGAL EXPERT OPINION

Key words: *legal expert opinion, legal expert, expert, civil procedure.*

Scope of persons qualified to act as legal experts («experts in the field of law», regrettably there are inconsistencies in the terms used in the law, obviously they are the same) and their rights and responsibilities are specified in Art. 73 of the Ukrainian Code of Civil Procedure, listed among regulations on other parties to the civil procedure. According to Art. 73 of the Ukrainian Code of Civil Procedure, any person, who holds an academic degree and is recognized as an expert in the field of law, may act as a legal expert.

According to Art. 114 of the Ukrainian Code of Civil Procedure, parties to the case are entitled to file a legal expert opinion with the court. According to Art. 73 of the Ukrainian Code of Civil Procedure, the court shall make a decision on granting a legal expert the right to participate in the case and on entering the legal expert opinion into the case file. We shall assume that the rule on entering the expert's opinion into the case file shall also apply to the instance when the legal expert does not participate in the case personally, but his/her opinion is filed with the court by the party to the case under Art. 114 of the Ukrainian Code of Civil Procedure.

Such opinion is entered into the case file only based on a court ruling to that effect, whereas it does not matter whether such opinion was drawn up before or after commencement of an action.

Legal expert opinion is an outcome of research a) done by a special entity – recognized expert in the field of law, b) and covering a specific range of issues regarding application of an analogy of statute, analogy of law or content of rules of foreign law.

Purpose of the legal expert opinion is to assist in matters, which require special knowledge in the field of law. However, since judge is a person with relevant qualifications to hold such position and a person with legal knowledge (based on *jus novit curia* principle, meaning «*the court knows the law*»), legal expert opinion may, as a rule, apply to narrow-focus legal matters, expressly identified in the law: 1) application of an analogy of statute or analogy of law (the judge may at his/her own discretion or based on the legal expert opinion apply analogy of statute or analogy of law for settlement of matters in controversy); 2) content of the rules of foreign law in accordance with official or generally accepted interpretation thereof, practical application and doctrine in the relevant foreign state. Unlike the previous paragraph, in this case we deal with the foreign law, rules of which a Ukrainian judge is not obliged to know.

There are no special requirements to verification of the legal expert's knowledge of the rules of certain foreign law.

List of matters, regarding which a legal expert opinion may be issued, is exhaustive. That is why the legal expert opinion may not address application of any legal standard or factual circumstances of the case. If the opinion filed addresses other matters not specified herein, for instance, if the opinion addresses matters governed by the laws currently in force, fees for execution thereof may not be reimbursed as a part of legal costs.

Legal expert is not deemed an expert in the meaning of Art. 72 of this Code. Legal expert opinion is not a type of expert opinion. Subject of the expert opinion may be study of circumstances included into the facts to be proven, establishment of which requires the expert having special knowledge. Matters of law may not be a subject of the expert opinion (see Art. 102 of the Ukrainian Code of Civil Procedure), whereas a legal expert prepares an opinion on matters of law (range of which is specified in Art. 115 of the Ukrainian Code of Civil Procedure). Expert opinion is evidence in the case, on the basis of which the court establishes certain circumstances, whereas a legal expert opinion is not evidence. Art. 72 of the Ukrainian Code of Civil Procedure stipulates that an expert shall provide a substantiated and unbiased opinion in writing on the given matters. Art. 73 does not expressly stipulate such obligation with regard to a legal expert.

Legal expert is not notified of his/her responsibility for making a patently false opinion or for refusal without good cause to perform duties undertaken (though there are some instances of incorrect interpretation of the rules of foreign law in judicial practice, see Judgment of the Supreme Commercial Court of Ukraine dated March 6, 2017 in the case No. 907/930/15). On the other hand, in case of interpretation of the rules of foreign law, which, as we

have noted above, a Ukrainian judge is not obliged to know, the judge relies on professional knowledge of a legal expert, so the law should have stipulated responsibility of the latter for making a patently false opinion.

Art. 72 of the Ukrainian Code of Civil Procedure expressly states that an expert may be appointed by the court or called for by a party to a case, whereas Art. 73 of the Ukrainian Code of Civil Procedure merely states that “a legal expert may be called for”. In view of the fact that above article deals with the right of the party to the case to file a legal expert opinion with the court, it seems that for such legal expert to be called for nothing but initiative of the party to the case, and not the court’s decision, is required.

Art. 38 of the Ukrainian Code of Civil Procedure does not mention a legal expert in the list of persons, with regard to whom a motion for disqualification may be filed. On the other hand, a legal expert opinion is of advisory nature.

Activities of the legal expert are not governed by the law in terms of standards and principles of such activities or methods to be applied. There are no requirements as to licensing, certification, employment, length of service, etc. The only objective condition for designating such a person as a legal expert is an academic degree, and the subjective requirement is recognition of such person as a legal expert (see Art. 73 of the Ukrainian Code of Civil Procedure).

Purpose of the legal expert opinion is not to establish or to examine circumstances that are a basis for claims and objections of the parties, unlike an expert opinion. Purpose of the legal expert opinion is to assist in matters of application of an analogy of statute, analogy of law or content of rules of foreign law, and it deals only with matters of law.

Scholarly opinions on application of the standards of law are prepared by Members of the Academic Advisory Board of the Supreme Court (Regulations on the Academic Advisory Board of the Supreme Court dated February 2, 2018, approved by the Decree of the Plenum of the Supreme Court). Their opinions should not be confused with opinions that are a subject matter of this article. Academic Advisory Board is an advisory body established at the Supreme Court under Art. 47 of the Law of Ukraine «Court System and Status of Judges» for preparation of scholarly opinions on activities of the Supreme Court that require academic support. Members of the Academic Advisory Board perform their duties on a gratuitous basis. Scholarly opinions are provided not at the initiative of the parties, but at the initiative of the Supreme Court.

Legal expert cannot make judgements on circumstances of the case or make opinions on the merits of the dispute, since credibility of such an opinion won’t be high due to the manner of obtaining the same. The legal expert shall interpret standards of law based on the legal doctrine and case law with maximum level of impartiality.

According to Art. 115 of the Ukrainian Code of Civil Procedure, legal expert opinion is not deemed as evidence, has ancillary (advisory) nature and is not binding upon the court. Though this article is in the chapter dedicated to evidence and proving, a legal expert opinion is not evidence. Such opinion

is deemed as an advisory document, which questions overall feasibility of existence thereof.

The court is not obliged to enter the legal expert opinion into the case file, and even if it does, it shall not be binding upon the court. If the judge makes conclusions similar to those specified in the legal expert opinion, the court still has to make independent conclusions on relevant matters. At the same time the court may rely upon the legal expert opinion, but only to the extent of certain information specified by the legal expert, and not upon the outcome of the research.

When considering the legal expert opinion the court may disregard it without giving any reason, is not obliged to explain the reason for refusal to accept conclusions in question, unlike in the case of an expert opinion, rationale for overruling which by the court must be specified in the court judgment (Art. 110 of the Ukrainian Code of Civil Procedure).

Unlike an expert analyzing objective circumstances, a legal expert makes conclusions on the rules of foreign law, which may have various interpretations depending on application thereof in terms of time and scope of persons, and may also be interpreted in many ways in academic sources and case law.

Since the legal expert is entitled to consideration for his/her services to be paid by the customer, and there is no responsibility stipulated for making patently false opinions, opinions of such legal expert may be biased, and this fact shall be considered by the court when deciding on whether the legal expert opinion may be relied upon.

HRYSCHUK O. V.

Ivan Franko National University of Lviv,
Professor of the Department of Law Theory and Philosophy,
Doctor of Law, Professor

**CONSTITUTIONAL VALUES: INDIVIDUAL ASPECTS
OF JUDICIAL INTERPRETATION**

Key words: *constitutional values, interpretation, judicial interpretation.*

In order to reveal the meaning of the concept of “constitutional values”, it seems necessary to draft off the content of the two components of it, namely: “constitutional” and “values”. Expanding the content of these two concepts, one can come to an understanding of the essence and content of the concept of “constitutional values”, which covers the features and qualities of its constituents, offers us a new meaning with a qualitatively transformed meaning. Applying the so-called “elemental approach”, that is structuring the concept into component parts, a deeper understanding of it is theoretically possible. However, one should remember that the concept of “constitutional