

June 7 2022

Importance of expert opinion for proceedings

Kubas Kos Gałkowski | Litigation - Poland

BARBARA JELONEK-
JARCO, MAGDALENA
KRZEMIŃSKA



- › **Introduction**
- › **Irreplaceability of expert opinion**
- › **Subject of opinion**
- › **Review of opinion by court**
- › **Explanation of opinion and additional or supplementary opinion**

Introduction

In Polish civil procedure, the court may summon one or more experts to give their opinion in cases requiring special knowledge. The court should indicate whether the opinion is to be presented orally or in writing. The court may also request an opinion from an appropriate scientist or scientific research institute. The role of an expert's opinion is crucial for resolving the case in many proceedings; therefore, the procedural rules regulating these issues are continuously analysed by the courts. It should also be emphasised that a private opinion drawn up at the request of a party to the proceedings does not replace the opinion of an expert appointed by the court.

Irreplaceability of expert opinion

Where special knowledge is necessary for the resolution of a case, expert evidence may not be replaced by other evidence. A private opinion commissioned by a party does not replace a court expert opinion. However, the court may admit evidence from an opinion commissioned by a public authority and drawn up in other proceedings provided for by law (eg, an opinion commissioned by a court in other court proceedings or an opinion obtained by the authority in administrative proceedings).

Subject of opinion

The subject of the expert opinion is the circumstances concerning the facts of the case. An expert does not establish facts relevant to the case but provides the court with special information on those facts and necessary explanations, thus facilitating the assessment of the evidence gathered from the point of view of the knowledge in the specific field in which they are an expert. Therefore, it is not admissible to appoint an expert and draw up an opinion on the content or interpretation of provisions of law.

Experts may provide the court with the specialist knowledge necessary to assess the health condition of a person applying for a disability benefit, for example, including the type of existing health problems, their degree of advancement and the severity of the related ailments, collectively determining the ability or lack of ability to perform employment. Case law emphasises that in this regard the court may not rely on its own conviction, principles of logical thinking, life experience and common knowledge. This is because these criteria, for obvious reasons, do not include specialist medical knowledge.

Review of opinion by court

Of course, like any other piece of evidence, an expert opinion is subject to evaluation by the court. However, the specificity of the evaluation of the expert opinion is that it is not a question of credibility, as in the case of evidence from the testimony of witnesses and parties, but a positive or negative recognition of the value of the reasoning contained in the opinion. Therefore, the review of an expert opinion should consist of checking the correctness – from the point of view of the requirements of logic and the principles of life experience – of the reasoning carried out in its substantiation, which led the expert to formulate such opinion.

Explanation of opinion and additional or supplementary opinion

The specificity of expert evidence consists, among other things, of the fact that if the court has already admitted such evidence, then under the wording of article 286 of the Code of Civil Procedure, the court may request oral or written supplementation of the opinion or its explanation, as well as an additional opinion from the same or other experts.

A request for the admission of evidence from another expert's opinion is not justified if the court is convinced that the opinion of the appointed expert is so definite and convincing that it sufficiently explains the

issues requiring special knowledge. However, it is assumed that the court is bound to admit evidence from the additional opinion of the same or other experts if the opinion submitted to the case contains significant deficiencies or contradictions or does not explain the relevant circumstances.

It cannot be assumed that the court is obligated to admit further expert evidence whenever the submitted opinion is unfavourable to a party. Therefore, the need to appoint another expert should arise from the circumstances of the case, not merely from the party's dissatisfaction with the previously submitted opinion. In this context, the party's conviction that further opinions will allow proving the thesis favourable for the party may not constitute such a need. Nor can the dissimilarity of the position expressed in the expert opinion and the private out-of-court expert opinion constitute such grounds.

For further information on this topic please contact Barbara Jelonek-Jarco or Magdalena Krzemińska at Kubas Kos Gałkowski by telephone (+48 22 206 83 00) or email (barbara.jelonek@kkg.pl or magdalena.krzeminska@kkg.pl). The Kubas Kos Gałkowski website can be accessed at www.kkg.pl.