



Atunci când se aplică metoda analizei comparative a vânzărilor în practică, există probleme serioase. În țara noastră, problema disponibilității informațiilor necesare pentru examinare este destul de acută în comparație cu alte state. De exemplu, la nivel de stat, este necesar să existe un registru de tranzacții cu prețuri deschise pentru proprietățile imobiliare, astfel încât expertul să poată aplica date cu tranzacții veridice. În prezent, expertul nu este sigur în veridicitatea datele folosite în metoda dată.

De asemenea, în cazul utilizării metodei veniturilor, expertul folosește datele contabile, însă nu în toate cazurile documentația financiară corespunde realității, deoarece în majoritatea cazurilor agenții economice nu reflectă veniturile reale obținute din activitățile sale.

În opinia noastră, această stare de lucruri nu poate dura mult timp.

Este necesară elaborarea și aprobarea metodelor standard în expertiza judiciară în domeniul evaluării bunurilor imobile și modificarea legislație în vigoare. Acest lucru ar contribui nu numai la eliminarea lacunelor existente în activitatea de expertiză judiciară în domeniul evaluării bunurilor imobile și utilajului tehnologic, ci și la asigurarea sistemului judecătoresc cu concluzii de înaltă calitate, la nivelul contemporan.

Literatura folosită

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2. Legea № 989 din 18.04.2002, cu privire la activitatea de evaluare;

3. Hotărârea Guvernului № 958 din 04.08.2003, despre aprobarea regulamentului provizoriu privind evaluarea bunurilor imobile;

4. O. Buzu, A. Matcov "Evaluarea bunurilor imobile, teoria și practica" (2003).

PROFICIENT ON THE BACKGROUND OF SELECTED PROVISIONS OF THE CODE OF CIVIL PROCEDURE

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The purpose of this study is to analyze the standards contained in art. 278 to 289 of the Act of November 17, 1964. Code of Civil Procedure, in order to determine the procedural position of an expert, with particular emphasis on his duties and powers. It should be emphasized that court experts are concerned with the principle of the obligation of an expert to perform his duties. Pursuant to § 5 of the Ordinance of the Minister of Justice of 24 January 2005 on expert witnesses, an expert can not refuse to carry out his duties in the district court, at which he was appointed, ordered by a court or authority conducting preparatory proceedings in criminal cases, with the exception of cases defined in the regulations governing proceedings before these bodies.

Keywords: court expert, civil proceedings, president of the regional court, justice

1. Introductory remarks

The purpose of this study is to analyze the standards contained in art. 278 to 289 of the Act of November 17, 1964, the Code of Civil Procedure¹, to determine the procedural position of an expert, with particular regard to his duties and powers. It should be emphasized that court experts are concerned with the principle of the obligation of an expert to perform his duties. Pursuant to § 5 of the Regulation of the Minister of Justice of January 24, 2005 on court experts² the expert can not refuse to carry out his duties in the district court, at which he was appointed, commissioned by a court or authority conducting preparatory proceedings in criminal cases, except for cases specified in the regulations governing the proceedings before these authorities.

2. Obligations and qualifications of experts

According to art. 278 § 1 k.p.c.

¹ Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, t.j. Dz.U. z 2018 r. poz. 1360, zwana k.c.

² Rozporządzenie Ministra Sprawiedliwości z dnia 24 stycznia 2005 r. w sprawie biegłych sądowych, Dz.U. z 2005r., nr 15, poz. 133.

in cases requiring special information, after hearing the parties' requests regarding the number of experts and their choice, the court may summon one or several experts to seek their views. The expert is an assistant to the court in assessing the facts³. His opinion constitutes a special evidence, subject to the judgment of the adjudicating court to which it applies, expressed in art. 233 § 1 k.p.c.⁴. the principle of a free assessment of evidence. The application of this principle to an expert opinion requires taking into account the principle of logic, general knowledge and the level of expert knowledge, the theoretical basis of opinion as well as the manner of motivating and the degree of firmness of the conclusions expressed in it. The expert's task is to present the court with opinions on the basis of possessed professional knowledge and professional experience, information and necessary information to determine

³ Postanowienie SN z dnia 21 grudnia 1966 r., I CR 214/66, LEX nr 6090.

⁴ Zgodnie z art. 233 § 1 k.p.c. sąd ocenia wiarygodność i moc dowodów według własnego przekonania, na podstawie wszechstronnego rozważenia zebranego materiału.



and assess the circumstances of the case. The expert's opinion is based on special messages and is therefore subject to court judgment based on all the material collected in the case. The court assesses whether the expert in question has responded to the evidence resulting from other evidence that may form the basis of the opinion in the opinion as well as whether, based on the material collected in a logical and clear way presented the course of reasoning leading to the conclusions drawn in it⁵. It should be emphasized that evidence from an expert opinion is subject to the judgment of the court only in a fragmentary scope covering professionalism, reliability, logic and the manner of motivating and the degree of firmness of the conclusions expressed in it. Despite the principle that the court is the highest expert, its evaluation does not cover the sphere of specialist knowledge. The court can not disagree with expert views of experts; he may omit the obvious expert's mistakes, they will not be able to replace them with his own statements or insights⁶. If the findings relevant to the resolution of the case require special information, the court can not do them on its own, even if he had the relevant qualifications in this field. To make arrangements and assessments requiring special messages, the court is obliged to seek expert opinion from the office⁷. The expert's opinion is not the source of the material of the case, because its role does not consist in making independent factual findings relevant for the ap-

⁵ Wyrok Sądu Apelacyjnego w Białymstoku z dnia 13 września 2018 r., sygn. akt I ACa 235/18 LEX nr 2574883.

⁶ Wyrok Sądu Apelacyjnego w Łodzi z dnia 6 września 2018 r., sygn. akt I ACa 1759/17 LEX nr 2596528; wyrok Sądu Apelacyjnego w Lublinie z dnia 10 października 2018 r., sygn. akt III AUa 195/18 LEX nr 2574809.

⁷ Wyrok SN z dnia 26 października 2006 r., sygn. akt I CSK 166/06, LEX nr 209297.

plication of a specific legal norm. The burden of demonstrating the facts from which legal effects are derived burdens the parties, while the expert explains only the circumstances explained from the point of view of special messages, taking into account the process collected and the material of the case made available to him⁸.

The interpretation and application of the law is beyond the scope of the expert judgment expresses in the opinion⁹. The expert opinion should follow after hearing the parties' requests regarding the number of experts and their choice. However, the court is not even bound by the parties' consistent position on this point. Determining the number of experts belongs only to the court ruling. Appointment of several experts is justified when special messages from various fields are required in the case. On the other hand, the need to appoint another expert can not be justified in the fact that the opinion of an expert already appointed is, to her mind, unfavorable to her¹⁰. If there is a discrepancy in the opinions expressed in expert opinions, the court should first seek to clarify the contradictions in their opinions by jointly examining the experts. If this action has not led to the removal of contradictions to the extent that it is possible to make a choice between opinions, it is reasonable to allow the evidence of another expert's opinion at the

⁸ Wyrok SN z dnia 8 listopada 1976 r., I CR 374/76, OSNC 1977, Nr 10, poz. 187; wyrok Sądu Apelacyjnego w Katowicach z dnia 18 października 2013 r., sygn. akt I ACa 663/13, LEX nr 1394210.

⁹ Wyrok SN z dnia 8 listopada 1976 r., I CR 374/76, OSNC 1977, Nr 10, poz. 187; postanowienie SN z dnia 21 grudnia 1966 r., I CR 214/66, LEX nr 6090; wyrok Sądu Apelacyjnego w Gdańsku z dnia 11 kwietnia 2018 r., sygn. akt III AUa 930/17, LEX nr 2490274

¹⁰ T. Demendecki, *Komentarz do art. 278 Kodeksu postępowania cywilnego*, [w:] A. Jakubecki (red.), *Kodeks postępowania cywilnego. Komentarz aktualizowany*, Tom I, LEX 2018 [dostęp 16.03.2019r.].

request of a party or ex officio¹¹. The opinion of an expert is only an opinion drawn up by a person appointed by the court, because only she has the value of proof. Expert opinion prepared at the request of the party and submitted to court files can not be treated as evidence in the proceedings, it only confirms the position of the party¹². According to 278 § 3 k.p.a. the court will determine whether the opinion should be presented orally or in writing. The court selects the form in which the opinion is to be presented, depending on the complexity of the issues assessed by the expert, as well as its structure¹³.

Regardless of whether the court ordered him to prepare an oral or written opinion, he should always be summoned to the hearing¹⁴. An oral opinion is admissible in the case of its immediate expression, and it does not require extensive argumentation, nor does it impede the parties' response to it¹⁵. "The content of the oral opinion shall be included in the minutes of the court session (Article 157 § 1 of the penal code), whereas if the evidence is provided by a designated judge or by a requested court, the minutes shall also be signed by an expert (Article 238 § 1 of the pe-

¹¹ Wyrok SN z dnia 14 listopada 2013 r., sygn. akt IV CSK 135/13, LEX nr 1405234.

¹² Uzasadnienie wyroku SN z dnia 10 grudnia 1998 r., I CKN 922/97, Lex nr 50754; wyrok Sądu Apelacyjnego w Katowicach z dnia 17 stycznia 2014 r., V ACa 629/13, Lex nr 1428100; wyrok Sądu Apelacyjnego w Katowicach z dnia 12 lutego 2014 r., I ACa 462/13, Lex nr 1437965.

¹³ T. Demendecki, *Komentarz do art. 278 Kodeksu postępowania cywilnego*, [w:] A. Jakubecki (red.), *Kodeks postępowania cywilnego. Komentarz aktualizowany*, Tom I, LEX 2018 [dostęp 16.03.2019r.].

¹⁴ Wyrok SN z dnia 14 listopada 2013 r., sygn. akt IV CSK 135/13, LEX nr 1405234.

¹⁵ T. Demendecki, *Komentarz do art. 278 Kodeksu postępowania cywilnego*, [w:] A. Jakubecki (red.), *Kodeks postępowania cywilnego. Komentarz aktualizowany*, Tom I, LEX 2018 [dostęp 16.03.2019r.].



nal code)¹⁶. According to art. 279 kp.c. admission of expert evidence may take place in closed session after hearing the parties' requests regarding the number of experts and their selection. The decision on the number of experts appointed to issue an opinion in the case lies with the adjudicating court, which is not bound by the parties' consistent position on this subject¹⁷.

From the admission of evidence from an expert opinion at a secret sitting, the power of the chairman, who may, in order to prepare a hearing, summon persons appointed by the parties to experts (see Article 208 § 1 point 4 of the penal code) for the hearing, should be distinguished. The decision on entrusting this person to the presentation of the opinion is taken by the court during the proceedings¹⁸. The expert is obliged to refuse to accept the expert's obligation in the cases specified in the k.p.c. According to art. 280 kp.c. a person appointed as an expert may not accept the obligation imposed on it for reasons that entitle the witness to refuse to testify, and also because of an obstacle preventing her from issuing an opinion. The right to refuse to testify is subject to the regulation of art. 261 § 1 of the penal code, which provides that no one has the right to refuse to testify as a witness, with the exception of spouses of the parties, their initial, descendants and siblings and related persons in the same line or degree, as well as persons remaining with the parties in relation to adoption. The right to refuse to testify continues after the end of marriage or termi-

nation of adoption. However, refusal to testify is not admissible in matters of state law, except for divorce. The doctrine assumes that a person appointed as an expert may not accept the obligation imposed on it for reasons that entitle the witness to refuse to answer questions¹⁹.

A witness may refuse to answer a given question if the testimony could expose him or his relatives mentioned in the preceding paragraph to criminal liability, shame or severe and direct property damage (see Article 261 § 2 of the penal code). „A lawyer is not entitled to a complaint against a court decision refusing to release him from performing an expert duty”²⁰.

The expert is obliged to maintain impartiality; it may be turned off until the expert's activity is completed, if the party requests such a request due to reasons that may be requested to exclude the judge (see Article 281 in principle k.p.c.). The reasons referred to above are subject to the regulation of art. 49 (Iudex suspectus). The expert is subject to exclusion, pursuant to art. 49 k.p.c. if there are doubts about his impartiality. The assessment whether a given circumstance justifies doubts as to the impartiality of a particular expert should be made from the perspective of an outside observer²¹.

Doubts as to the impartiality of the expert may exist before the commencement of the proceedings or also arise during its course. Any objectively existing circumstance, causing doubt, justifies the request for exclusion and should lead to the application being considered²².

There is no doubt as to the impartiality of the expert, the fact that he has drawn up an opinion in the matter, despite having previously drawn up an opinion in another case pending between the same parties²³. When a party requests the exclusion of an expert after the commencement of his activities, he is obliged to substantiate that the reason for the exclusion arose later or that it was not known beforehand (see Article 281 in fine, p.p.c.). Before starting the activity, an expert promises the following wording: “I am solemnly aware that I will perform the duties entrusted to me with all my diligence and impartiality, aware of the importance of my words and responsibilities before the law. The rules regarding witness's oath²⁴ (see Article 282 of the penal code) apply to the oath of expert witness. An entity that receives an oath from an expert is the court²⁵. As emphasized in the judgment of the Court of Appeal in Katowice of 8 March 2013: “The submission of an expert judgment only after submitting an opinion in writing, but before the end of the expert case does not deprive the opinion of evidential value, as the court may in cases requiring special messages allow evidence from an expert opinion and it does not have to be a permanent expert, entered in the list of experts²⁶ “. The expert is relieved of the obligation to make a promise, when both parties agree to it (see Article 283 § 1 of the penal code). On the other hand, the expert witness only takes a promise only when the position is taken, and in particular matters refer to them (see Article 283 § 2 of the penal code). In the event of

¹⁶ Tamże.

¹⁷ T. Żyznowski, *Komentarz do art. 279 Kodeksu postępowania cywilnego*, [w:] H. Dolecki (red.), Wiśniewski Tadeusz (red.), *Kodeks postępowania cywilnego. Komentarz*. Tom I. Artykuły 1-366, wyd. II, LEX 2013 [dostęp 16.03.2019r.].

¹⁸ T. Demendecki, *Komentarz do art. 279 Kodeksu postępowania cywilnego*, [w:] A. Jakubecki (red.), *Kodeks postępowania cywilnego. Komentarz aktualizowany*, Tom I, LEX 2018 [dostęp 16.03.2019r.].

¹⁹ Tamże.

²⁰ Postanowienie SN z dnia 15 lipca 1969 r., II CZ 78/69, OSN 1970, nr 5, poz. 87, LEX nr 1003.

²¹ Wyrok Sądu Apelacyjnego w Białymstoku z dnia 26 czerwca 2018 r. sygn. akt I ACa 293/16, LEX nr 2558918.

²² Wyrok Sądu Apelacyjnego w Gdańsku z dnia 5 kwietnia 2018 r., sygn. akt V AGa 48/18, LEX nr 2538244.

²³ Por. wyrok Sądu Apelacyjnego w Warszawie z dnia 15 listopada 2017 r., sygn. akt VII ACa 1394/17, LEX nr 2487716.

²⁴ Zob. art. 269 i 270 k.p.c.

²⁵ Por. wyrok Sądu Apelacyjnego w Szczecinie z dnia 12 kwietnia 2018 r., sygn. akt III AUa 454/17, LEX nr 2493616.

²⁶ Wyrok Sądu Apelacyjnego w Katowicach z dnia 8 marca 2013 r., sygn. akt V ACa 783/12, LEX nr 1292656.



an unjustified refusal to make a court's oath, the expert's fines (Article 287 of the penal code). According to art. 284 k.p.c. the court may order an expert to present the case file and the subject of the inspection and order it to take part in the evidentiary proceedings. In the Supreme Court judgment of 20 June 1984, it was stated that: "The observation and observation of necessary observations in the course of an examination with an expert may be justified if the examination of the subject matter of the dispute may also allow the Court to determine the facts relevant to the case. Otherwise, the court should entrust the expert with the task of making actual observations as the premises of his opinion²⁷."

The expert's opinion, including the justification which is its essential element, is the expert's response to the formulated evidence and possible further requirements of the court addressed to the expert²⁸. The expert's opinion should contain justification formulated in an accessible and understandable way also for people who do not have special messages (Article 278 § 1 of the penal code in relation to Article 285 § 1 of the penal code)²⁹. Experts may submit a joint opinion (Article 285 § 2 of the Civil Code). According to art. 285 § 2 kp. if the expert can not give a comprehensive opinion yet, the court will set an additional date for its submission. Measures to remove doubts arising in connection with the content of the opinion are included in art. 286 k.p.c. which states that the court may request an oral explanation of

an opinion submitted in writing, it may also, if necessary, request an additional opinion from the same or other experts (Article 286 of the penal code). "Only if the expert can not give a categorical answer or indicate the degree of probability, the court will be forced to determine the circumstances for which the expert was appointed, based on all the evidence collected in the case and using general rules of evidence³⁰." The expert has the right to demand remuneration for appearing in court and the work done. The chairman may grant an expert an advance on expenses (Article 288 of the penal code). Experts' fees calculated by the court for the work performed; flat rates for individual expert categories due to the field in which they are specialists, as well as the method of documenting the expenses necessary to issue an opinion have been regulated in the Ordinance of the Minister of Justice of April 24, 2013. on determining the rates of expert fees, flat rates and how to document expenses necessary to issue an opinion in civil proceedings³¹. Regulation of the Minister of Justice of 24 April 2013 on the determination of expert fees, lump sums and how to document expenses necessary to issue an opinion in civil proceedings, Dz.U. from 2013, item 518. Order awarding remuneration³².

3. Summary

The legal provisions concerning the expert in civil proceedings define him as a court's assistant in the assessment of the

facts, who is obliged to maintain impartiality, professionalism and have professional experience. Due to the fact that the opinion of an expert is based on special messages, the court can not do it on its own. In this case, the court is obliged to seek expert opinion from the office. The role does not consist in making independent factual findings relevant for the application of a specific legal norm, and therefore the expert opinion is not the source of the actual fact of the case. The interpretation and application of the law is beyond the scope of the expert judgment expressed in the opinion.

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Normative acts:

1. Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, tj. Dz.U. z 2018 r. poz. 2096.
2. Rozporządzenie Ministra Sprawiedliwości z dnia 24 stycznia 2005 r. w sprawie biegłych sądowych, Dz.U. z 2005r., nr 15, poz. 133.
3. Rozporządzenie Ministra Sprawiedliwości z dnia 24 kwietnia 2013 r. w sprawie określenia stawek wynagrodzenia biegłych, taryf zryczałtowanych oraz sposobu dokumentowania wydatków niezbędnych dla wydania opinii w postępowaniu cywilnym, Dz.U. z 2013r. poz. 518

Certification:

1. Wyrok SN z dnia 8 listopada 1976 r., I CR 374/76, OSNC 1977, Nr 10, poz. 187
2. Wyrok SN z dnia 20 czerwca 1984 r., sygn. akt II CR 197/84, OSNC 1985/2-3/37
3. Wyrok SN z dnia 10 grudnia 1998 r., I CKN 922/97, Lex nr 50754
4. Wyrok SN z dnia 29 lipca 1999 r., II UKN 60/99, OSNP 2000, nr 22, poz. 831, LEX nr 43669

²⁷ Wyrok SN z dnia 20 czerwca 1984 r., sygn. akt II CR 197/84, OSNC 1985/2-3/37.

²⁸ T. Żyżnowski, *Komentarz do art. 285 Kodeksu postępowania cywilnego*, [w:] H. Dolecki (red.), Wiśniewski Tadeusz (red.), *Kodeks postępowania cywilnego. Komentarz*. Tom I. Artykuły 1-366, wyd. II, LEX 2013 [dostęp 16.03.2019r.].

²⁹ Wyrok SN z dnia 29 lipca 1999 r., II UKN 60/99, OSNP 2000, nr 22, poz. 831, LEX nr 43669.

³⁰ Wyrok SN z dnia 19 września 2018 r., sygn. akt I CSK 578/17, LEX nr 2566916.

³¹ Rozporządzenie Ministra Sprawiedliwości z dnia 24 kwietnia 2013 r. w sprawie określenia stawek wynagrodzenia biegłych, taryf zryczałtowanych oraz sposobu dokumentowania wydatków niezbędnych dla wydania opinii w postępowaniu cywilnym, Dz.U. z 2013 r. poz. 518.

³² Postanowienie Sądu Apelacyjnego w Poznaniu z dnia 5 lutego 2014 r., sygn. akt I ACz 112/14, LEX nr 1425502.



5. Wyrok SN z dnia 26 października 2006 r., sygn. akt I CSK 166/06, LEX nr 209297

6. Wyrok SN z dnia 14 listopada 2013 r., sygn. akt IV CSK 135/13, LEX nr 1405234

7. Wyrok SN z dnia 19 września 2018 r., sygn. akt I CSK 578/17, LEX nr 2566916

8. Postanowienie SN z dnia 21 grudnia 1966 r., I CR 214/66, LEX nr 6090

9. Postanowienie SN z dnia 15 lipca 1969 r., II CZ 78/69, OSN 1970, nr 5, poz. 87, LEX nr 1003

10. Wyrok Sądu Apelacyjnego w Katowicach z dnia 8 marca 2013 r., sygn. akt V ACa 783/12, LEX nr 1292656

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12. Wyrok Sądu Apelacyjnego w Katowicach z dnia 17 stycznia 2014 r., V ACa 629/13, Lex nr 1428100

13. Wyrok Sądu Apelacyjnego w Katowicach z dnia 12 lutego 2014 r., I ACa 462/13, Lex nr 1437965

14. Wyrok Sądu Apelacyjnego w Warszawie z dnia 15 listopada 2017 r., sygn. akt VII ACa 1394/17, LEX nr 2487716

15. Wyrok Sądu Apelacyjnego w Gdańsku z dnia 5 kwietnia 2018 r., sygn. akt V AGa 48/18, LEX nr 2538244

16. Wyrok Sądu Apelacyjnego w Gdańsku z dnia 11 kwietnia 2018 r., sygn. akt III AUa 930/17, LEX nr 2490274

17. Wyrok Sądu Apelacyjnego w Szczecinie z dnia 12 kwietnia 2018 r., sygn. akt III AUa 454/17, LEX nr 2493616

18. Wyrok Sądu Apelacyjnego w Białymstoku z dnia 26 czerwca 2018 r. sygn. akt I ACa 293/16, LEX nr 2558918

19. Wyrok Sądu Apelacyjnego w Łodzi z dnia 6 września 2018 r., sygn. akt I ACa 1759/17 LEX nr 2596528;

20. Wyrok Sądu Apelacyjnego w Białymstoku z dnia 13 września 2018 r., sygn. akt I ACa 235/18 LEX nr 2574883

21. Wyrok Sądu Apelacyjnego w Lublinie z dnia 10 października 2018 r., sygn. akt III AUa 195/18 LEX nr 2574809

22. Postanowienie Sądu Apelacyjnego w Poznaniu z dnia 5 lutego 2014 r., sygn. akt I ACz 112/14, LEX nr 1425502

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