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«THE PECULIARITIES OF THE CONCLUSION OF CONTRACTS WITH LAWYERS IN CIVIL PROCESS OF UKRAINE»

***Abstract.** There are defined the peculiarities of conclusion of contracts with lawyers in civil process of Ukraine. There are examined the main laws that regulate the features of conclusion of contracts with lawyers in civil process of Ukraine. There are noted the provisions about using of QEP by lawyers. Also, there are paid attention on specific features of electronic contracts between clients and lawyers. They are considered the provisions of the Civil Procedure Code of Ukraine, that expressly provides for the possibility of representation on the basis of an agreement on the provision of legal assistance, including an agreement concluded in electronic form in compliance with the legislation on electronic commerce and electronic trust services. There are made a conclusion about specifics of conclusion of electronic contracts between clients and lawyers.*

***Key words:** electronic contract, conclusion, lawyer, client, QES, civil process.*

The Law of Ukraine "On Electronic Commerce" defines the procedure for concluding and executing electronic contracts.

According to Article 5 of the defined law, a transaction concluded in electronic form is considered concluded in writing form [1].

An electronic contract must contain the mandatory transaction details stipulated by law for the relevant type of transaction, as well as data allowing the identification of the party to the transaction [1].

An electronic contract is considered concluded from the moment the person who sent the proposal (offer) receives a response on the acceptance of this proposal (acceptance) [1].

According to Article 6 of the defined law, an electronic contract is considered to be concluded in writing if it is signed by the parties with an electronic signature [1].

If the law establishes the need for notarization of the transaction, the electronic contract is subject to notarization in the manner established by law [1].

Data created, transmitted, received and stored using electronic means of communication are admissible evidence of the conclusion of the contract [1].

In the Article 11 is established, that an agreement in electronic form is considered concluded from the moment the person who sent the proposal to conclude the agreement (offer) receives a response on the acceptance of this proposal (acceptance). The moment of conclusion of the agreement may be different if this is provided for by the agreement or the law.

Electronic commerce entities are required to use identification means that allow their identity to be established (including by means of an electronic signature) [1, Art. 7].

Thus, it can be concluded that an electronic contract is a contract concluded using electronic means of communication (e.g.: e-mail, instant messengers, document management platforms), where the expression of the parties' will is recorded in electronic form.

The electronic form of a contract is equivalent to a written form if it is signed with an electronic signature (a qualified electronic signature (QES) is required in civil and procedural relations); the contract does not require mandatory notarization or conclusion exclusively on paper.

The contract is concluded by exchanging electronic documents or confirming the offer with acceptance in electronic form (for example, acceptance of a lawyer's offer can be confirmed by sending a document signed with a QES).

The moment of conclusion of the contract is determined by the moment of receipt of the

acceptance of the offer by the other party.

Proof of conclusion of the contract is the storage of the electronic document and confirmation of its authenticity using an EDS/QES and data on the time of signing.

Dwelling on the specifics of concluding an agreement in electronic form between a lawyer and a client, the following provisions should be noted. The lawyer and the client must use a QES so that the electronic agreement is proper evidence in court. The courts of Ukraine recognize electronic agreements and documents provided that their authenticity and integrity can be verified using a QES.

The Law of Ukraine "On Advocacy and Advocacy Activity" regulates the procedure for providing legal assistance by lawyers, including the terms of concluding an agreement [3]. We propose to consider the main provisions that relate to the agreement on the provision of legal assistance, including the possibility of concluding it in electronic form.

According to Article 26 of the said Law, legal relations between a lawyer and a client arise on the basis of a contract for the provision of legal assistance [3].

The contract is concluded in writing form between a lawyer (law firm, law association) and a client [3].

The contract certifies the lawyer's authority to provide legal assistance and is the basis for representing the client's interests [3].

Article 27 of the same law states that the attorney's authority to provide representation is confirmed by: a contract for the provision of legal assistance; an order issued on the basis of such a contract [3].

An electronic contract may be used to issue an order and confirm authority in court, subject to compliance with the law (electronic signature) [3].

Thus the law does not prohibit the conclusion of an agreement on the provision of legal assistance in electronic form if: it complies with the requirements of the Civil Code of Ukraine (the written form of the transaction may be electronic); it is signed by a qualified electronic signature (QES) of the parties (this is confirmed by practice and clarifications of the courts); it contains all the mandatory details provided for by the Law on Advocacy and civil legislation.

The Civil Procedure Code of Ukraine provides for the possibility of representing the interests of persons on the basis of an agreement.

The parties and other participants in the case may conduct their cases in court in person or through a representative.

According to Article 60, a representative in court may be: a lawyer, another specialist in the field of law (in cases stipulated by law) [2].

Article 62 stipulates that the powers of a representative are confirmed by: a power of attorney, an agreement on the provision of legal assistance (for a lawyer), an order issued on the basis of an agreement [2].

A lawyer carries out representation on the basis of an agreement and an order issued in the manner established by the Law of Ukraine "On Advocacy and Advocacy Activity".

According to the Art. 100 of the Civil Procedure Code of Ukraine, electronic evidence shall be submitted in the original or in an electronic copy, on which a qualified electronic signature is affixed in accordance with the requirements of the laws of Ukraine "On Electronic Documents and Electronic Document Management" and "On Electronic Identification and Electronic Trust Services". The law may provide for a different procedure for certifying an electronic copy of electronic evidence [2].

Thus, the Civil Procedure Code of Ukraine expressly provides for the possibility of representation on the basis of an agreement on the provision of legal assistance, including an agreement concluded in electronic form in compliance with the legislation on electronic commerce and electronic trust services.

The Law of Ukraine "On Electronic Identification and Trust Services regulates the use of electronic signatures, including qualified electronic signatures (QES), by lawyers and other entities.

According to Article 3, a qualified electronic signature (QES) is an advanced electronic signature created using a qualified electronic signature creation tool and based on a qualified public

key certificate [4].

According to Article 18, a qualified electronic signature is legally equivalent to a handwritten signature (handwritten signing of a document on paper). A document signed with a QES is recognized as equivalent to a document on paper with a signature of a person, unless otherwise established by law [4].

According to Article 12, the electronic signature is used to: confirm the identity of the signatory; confirm the integrity and authenticity of the electronic document [4].

An electronic document signed with an electronic signature must be accepted as valid by government bodies, courts, local government bodies and other entities [4].

Thus, the lawyer's CEP is used to sign an electronic agreement on the provision of legal assistance, an order, procedural documents.

The court is obliged to accept documents signed by the CEP as valid (for example, an agreement with a client, a power of attorney).

The CEP guarantees that the electronic agreement has the same legal force as a paper one with a signature.

Thus, the following conclusions can be drawn. The law provides a legal basis for the use of electronic signatures by lawyers when concluding contracts and performing professional duties electronically. For the court, an agreement signed with an electronic signature is proper evidence of the lawyer's authority.

An agreement on the provision of legal assistance may be concluded in electronic form if: it is signed by both parties with an electronic signature; it contains all the necessary details; it is stored and used in a manner that ensures its authenticity and immutability.

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