DOI https://doi.org/10.30525/978-9934-26-116-9-15

THE RATIO OF THE LEGAL AND LOGICAL PROOF (EVIDENCE)

Yurkevich T. I.
Dr.iur. (Doctor of Laws, LLD),
Associate Professor at Baltic International Academy,
Director of the doctoral study program
«Law» at Baltic International Academy
Riga, Latvia

The notion of evidence belongs to the number of core starting points in the theory of evidence that are constituent parts of the foundation, on which the civil procedure is built. However, in the course of development of the theory of evidence that studies and describes various phenomena relating to the process of proving, legal science came across a whole number of difficulties, both theoretical and practical, which need to be solved. These key difficulties lay mainly in the fact that many questions of the theory of evidence are related to epistemology in general, to the questions of materialistic philosophy, logics, psychology, etc. Moreover, the very specifics of the civil proceedings, the goals and tasks of the civil procedure only aggravate these problems.

A whole number of questions relating to the theory of evidence, which are of primary importance, including the notion of evidence, have become the topic for discussion for a period of many years. There has been no common opinion formed among lawyers on the majority of these issues as yet. That is why the given subject-matter still remains topical and demands close attention and more thorough study.

Thus, the outwardly laconic legislative norms conceal in-depth content and difficulties encountered in court practice during application of these norms.

The primary task of a court is to protect the rights and interests secured by the law. However, in order to provide such type of protection before administration of the law, in any case the court must establish whether the right, protection of which is requested by the plaintiff, really exists and whether the defendant is bound by an appropriate liability, what exactly such liability is, that is, to find out what are the implications of the contested legal relationship. Rights and liabilities, however, do not spring into being all by themselves. Their origin, alterations and termination thereof are linked by the law to the occurrence of certain juridical facts, which serve the legal

basis for any civil legal relations. Therefore, for the court to clarify such contested relationships it is necessary in the first place to establish, which juridical facts occurred in reality. How is it possible to provide such knowledge? It is evidence that serves this purpose.

Since evidence is the tool for establishing juridical facts and the area of their application is linked to operation of jurisdictional bodies, it may be named as juridical evidence. Juridical evidence used in court is named judicial evidence. This is conditioned upon the fact that the ultimate goal of introduction and utilisation of evidence is to use it for shaping the basis for inner conviction of the court, which ultimately determines the content of any act of justice, or at least should do so.

On the one hand: to prove means to persuade the court in the truth of the fact asserted [1], but on the other hand: evidence in civil proceedings is regarded as the means for the court to obtain the true knowledge of the facts that are significant for the case. [2].

The truth is as necessary for the court as is justice. If the court would erroneously or wrongfully recognise real facts as nonexistent whereas admit imaginary facts as the true and apply to them the rules of law to the utmost accuracy, such mockery of justice would indicate to the damage caused thereof and would become a great disaster for the people [3].

Judicial award as the act of justice that concludes the proceedings and the final judgment on the merits of any civil case should always possess the qualities of legality and validity. A judicial award becomes valid only on the provision that it ensures that all circumstances of a case have received correct reflection and established (stated) facts have been proved with the help of judicial evidence. What is more, analysis of evidence must lead the court to correct logical conclusions corresponding to the case circumstances.

It is surely not an accident that the law (for example, Part 5 of Article 193 of the Law of Civil Procedure [4]) requires the court to specify the circumstances of the case in the motivational part of the judicial award, that is, the facts that have been established by the court and the evidence, on which the conclusions of the court have been based.

Now, what is judicial or court evidence after all?

This question despite the long-standing history of the theory of evidence has not yet received an unequivocal answer. Representatives of the science of civil procedure, as well as theoreticians of the criminal process approach this issue from various angles, and the opinions on this subject fundamentally differ at times. However, taking into account the significance of the issue and its practical significance in the first place, it should be noted that such variety of opinion brings more damage than benefit, making interpretation of the subject even more complicated.

Obviously, we can always point out that the definition of evidence does exist, and such definition has been provided by the law. However, it would be wrong to presume that such sort of approach would make the practice of law application easier, save it from theoretical «battles». Not in the least. This does not remove the complications as it was exactly the wording of the clause that gave rise to the argument in respect of the concept of evidence in the first place; and, second, the law in general and legislation in particular do not necessarily always reflect a really existing need to settle the shaping social relationships because they fail to «keep up» with their on-going development.

In this way, legislation lags behind the development of specific jural relations, which in their turn are being quite promptly analysed and summarised with the help of theory. And the law being an embodiment of theory is always supposed to try to catch up on the most progressive theoretical achievements that reflect dynamic development of social relations, their in-depth analysis.

Now, let us move to the concept of evidence as such.

When considering this issue, the majority of theoreticians first of all point out the specific character of the judicial or court evidence and its distinction from logical proof. Undoubtedly, this is the right position as logical proof is viewed as a more abstract category in comparison to juridical one, which in our case is more tangible. Logical and juridical proofs differ by their internal structure. Logical proof or reasoning operates with thoughts and facts, where already proven propositions, judgments and thoughts or those that assumed to be true and well-known, play the role of evidence.

Evidentiary reasoning in the course of administering justice, as well as the subject-matter itself, both appear to be quite specific, therefore evidence is quite specific as well. The purpose and the procedural aim here is to obtain true and reliable knowledge of the facts, on which basis the court establishes existence or nonexistence of the circumstances substantiating the claims and objections of the parties as well as other elements important for case resolution. By means of evidence the court becomes convinced of the true nature of actual circumstances/facts of the case [5].

One should be aware that it is not some proposition or thesis that is to be proved in the course of judicial activity but rather the presence or absence of real facts linked by the law to origination, changes or termination of jural relations, that is, the question is one of establishing the presence or absence of certain jural facts.

More to that, in contract to logical argumentation, judicial or court evidence must contain information of a particular character (contents of the court evidence) that has been legally obtained (procedural form of evidence).

At the same time these two concepts should not be brought too far apart: that is, juridical and logical proof should not be referred to separate categories and set against each other. The boundary that distinguishes these notions is a dotted line rather than well-drawn thick straight line as notwithstanding all its specifics juridical proof in its essence remains the same logical proof and is subject to the same laws of formation and use.

If we refer to textbooks of logic, we will find the following definition of logical proof there, *Proof is an inference demonstrating that a judgment is true, that is, assertion or denial arising from some other judgments, which have been acknowledged as true … Proof in logics represents exactly a statement of sufficient reason for any of our judgments. In logics by proof we understand the mental process intended to substantiate any proposition*'. [6] However, doesn't the concept of juridical proof in the very general sense correspond to the above mentioned definitions? It surely does. This statement by no means contradicts to the above expressed proposition regarding the difference existing between juridical and logical proof.

Such argumentation leads to the following opinion:

In proof theory, one should distinguish the notion of proof or evidence in its broader sense and in the narrower, juridical sense. Thus, a broader concept of proof means establishing whether the judgments are true or false by means of some other judgments that have been acknowledged as true. This is the concept of proof in its general sense and it is present in all scientific fields including the law since from the cognitive and theoretical point of view juridical proof as to its content in no way differs from the proof used by people in any sphere of cognitive activity.

As to its narrower juridical sense, proof or evidence is regarded as the means for the court to obtain true knowledge of the facts significant for the case.

One should not diametrically oppose the notion of juridical and logical evidence (proof) and juxtapose these two. Juridical evidence, given the whole of its specifics, in its essence still remains the same logical proof and is governed by the same laws of formation and use.

References:

1. Heintzmann. Zivilprozeßrecht I, Heidelberg, 1985. S.112.

2. Treushnikov M.K. Court evidence. – M. 2004, page 73 / Треушников. М.К. Судебные доказательства. – М. 2004 г. С. 73.

3. Malishev K.I. Course in Civil Proceedings. St.P. 1876. V. 1. (quote: Reader on Civil Procedure. Pages 92-93)/ Малышев К.И. Курс гражданского судопроизводства. СПб, 1876. Т.1. (цит. по Хрестоматия по гражданскому процессу. С. 92–93).

4. Law of the Republic of Latvia: 14.10.1998 Law on Civil Procedure ("LV", 326/330 (1387/1391), 03.11.1998) [came into force on 01.03.1999] wording as of 01.07.2021; LR likums: 14.10.1998. likums "Civilprocesa likums" ("LV", 326/330 (1387/1391), 03.11.1998.) [stājas spēkā 01.03.1999.] redakcijā 01.07.2021.
5. Baur/Grunsky. Zivilprozeßrecht, 8.Aufl.1994. S. 154;
6. Strogovich. M.S.Logics. M., 1946, p.222