

EVIDENCE AND PROVING IN CONSTITUTIONAL PROCEEDINGS: DOCTRINAL ASPECTS

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Annotation. *It was noted that the realities of social life, the political situation, global processes of transformation of phenomena and processes require legal accuracy in understanding the fundamental prescriptions specified by the Constitution, as well as ensuring the compliance of legislation with its provisions. Regarding the first question, there are two ways of solving it: detailing the provisions, which to a certain extent creates bulky codified texts that are difficult to apply, or clear, comprehensive formulations of constitutional norms, which provide for the establishment of fundamental principles of the functioning of state power and society, without detailed extended texts. It was noted that the institution of judicial evidence in constitutional proceedings is not as carefully regulated as in proceedings in criminal, arbitration and civil cases.*

It is indicated that the constitutional court process is a special environment that differs from other court processes existing in our country: in the field of activity, powers of judicial bodies, subjects, stages, legal force of decisions. Peculiarities of the environment where proof is carried out certainly give rise to specificity in the subject of proof, subjects, content and types of proof. This creates the need for more detailed regulation of proof and evidence in constitutional proceedings. In our opinion, proof is a type of cognitive process that is carried out in the order established by law and covers the activities of subjects involved in constitutional proceedings. And therefore, evidence in constitutional proceedings is a type of knowledge that is carried out in the order established by law and covers the activities of the subjects involved in constitutional proceedings, at the same time it represents a combination of both cognitive and procedural activities. The cognitive component characterizes the process of cognition, and the procedural component characterizes the special form that cognition takes within the framework of the rules of constitutional justice. At the same time, the construction of the subject of proof in constitutional proceedings follows (corresponds) to the construction of the subject of proof adopted in national law. However, we draw your attention, it would be worthwhile to normalize the specificity of the subject of proof in constitutional proceedings as a process aimed at solving legal issues.

Keywords: *Constitution of Ukraine, constitutionalism, Constitutional Court of Ukraine, proof, proof procedure, constitutional judiciary.*

1. Formulation of the problem.

Modern law and its branches, as two planes – ordinary and special – partially intersect and partially conflict, they are practically not adapted and cannot adequately respond to new threats to the state, both to the citizens of our country and to society as a whole, coming from the sources, which are not considered at all or are not considered potential objects of legal regulation, or do not know how it can be regulated. These are threats from wars (including hybrid ones). Therefore, a holistic vision of constitutionalism, designed to understand and explain the science of constitutional law, based on certain conceptual principles, which, in turn, approach a number of basic attitudes and are distinguished by the longevity of their influence – an urgent need of the science of constitutional law itself, a response to its desire to know the nature of his activity, and because of this, himself [12, p. 55].

The Constitution of Ukraine, as the main law of our state, is a defining document that forms the basis of the functioning of the most important state institutions, as well as the interaction of a person with

the state. One of the properties of the constitution is its stability in order to ensure the permanence of relations and legal predictability. Compliance with the stability of the constitution corresponds to its other properties, which determines its special status and place [1, p. 35].

However, the realities of social life, the political situation, global processes of transformation of phenomena and processes require legal precision in understanding the fundamental prescriptions specified by the Constitution, as well as ensuring the compliance of legislation with its provisions. Regarding the first question, there are two ways of solving it: detailing the provisions, which to a certain extent creates bulky codified texts that are difficult to apply, or clear, comprehensive formulations of constitutional norms, which provide for the establishment of fundamental principles of the functioning of state power and society, without detailed extended texts. The practice of international constitutionalism only confirms that the last version of constitutions is more convincing to apply. For example, the Constitution of the United States of America, approved in 1787, is still in effect today and has undergone only 27 amendments. Explaining the reasons for such stability, the famous American lawyer A. Cox points out that "the original Constitution still serves us well, despite the enormous changes in all areas of the life of the United States, because the creators of the Constitution had enough wisdom to invest in it exactly as much as was needed, but no more" [2, c. 12].

2. Research status.

Important issues of the investigated problem were considered in many works of domestic scientists, in particular, O.O. Bandurka, Yu.V. Baulin, V.F. Boykom, V.D. Bryntsev, Yu.M. Groshevym, A.S. Golovin, M.M. Gultayem, N.L. Drozdovych, A.Ya. Dubinsky, V.M. Kamp, N.I. Klymenko, V.O. Konovalova, M.V. Kostytskyi, N.V. Kostytska-Kushakova, V.T. Malyarenko, O.M. Myronenko, M.A. Pohoretskyi, B.M. Poshvoi, P.M. Rabinovych, O.A. Selivanov, O.O. Selivanov, M.I. Sirim, A.A. Stryzhak, V.M. Shapovalom, V.Yu. Shepitko, N. Shaptala and many others. However, despite a significant number of publications and scientific works, certain topical issues, in particular regarding the specifics of the subject of proof in the constitutional process, remained unexplored.

3. The purpose of the article.

The purpose of this publication is to consider the content of the approaches of modern scientists regarding the essence and features of evidence and proof in constitutional proceedings.

4. Presentation of the research material.

The institution of judicial evidence in constitutional proceedings is not as carefully regulated as in proceedings in criminal, arbitration and civil cases. The specificity of constitutional proceedings as a special form of administration of justice allows for the absence of norms in the legislation that define the concepts, signs and properties of evidence, the subject of proof, distribution of the burden of proof, collection, verification and evaluation of evidence, etc. There is no higher court above the KSU that would assess the constitutionality and reasonableness of its decision. In addition, the small amount of legal regulation of evidence in the Constitutional Court is explained by the fact that, as a rule, the Court examines not the facts of reality, but legal documents mainly laws [6, p. 24].

Evidence and related activities related to its collection, research, evaluation and use have long attracted the interest of scientists from various areas of legal science. The concepts of "evidence" and "proving" are among the central ones in science and practice, which necessitated a deeper study of these issues, the separation of a separate scientific direction - the theory of evidence, especially in constitutional proceedings. It should be noted that legal knowledge as an activity can be considered as a complex system consisting of a number of elements and having a certain structure, which allows us to talk about the technological process of reproduction of legal knowledge. Analysis of the internal structure of legal knowledge makes it possible to reveal all the features of this activity in a deeper and more complete way. Identifying and studying how legal knowledge is built is a necessary prerequisite for solving the problems of its scientific organization and management. In legal knowledge, the central link is the theory

of evidence, the core of which - the concept of "evidence" – is interpreted quite diversely, especially in constitutional judicial proceedings [13, p. 45].

Historically, Ukraine is not part of the countries that are states of common law, and therefore, courts of general jurisdiction are not empowered in the field of constitutional control and interpretative functions. The Kelsenian model of creating a specially authorized body of constitutional jurisdiction, introduced in Ukraine, provides for the endowment of its powers to verify the compliance of legislation with the provisions of the constitution and to interpret legislation. The Constitutional Court of Ukraine must possess a certain instrument that would help it to legally formalize or consolidate the decisions made, therefore, acts are such a means that legally formalizes the results of the Court's consideration of material, procedural or organizational issues. The adoption of a certain decision by the Constitutional Court of Ukraine is preceded by the formation of its opinions, which are based on certain positions, mainly of a legal nature [13, p. 46].

It should be noted that the peculiarity of proof as a process of judicial knowledge in constitutional proceedings is that it does not determine factual circumstances, the establishment of which belongs to the competence of other courts. This is due to the fact that the Constitutional Court in this category of cases exclusively resolves issues of law, and the court session does not prove some factual circumstances. Although already at the stage of accepting the appeal, when deciding on its admissibility, this Court establishes the following factual circumstances: the fact of issuance of the act subject to verification; the fact of application of this act to the applicant, etc. [14, p. 54].

One of the main places is given to the process of proving and collecting evidence in constitutional proceedings. This is due to the fact that it is on the basis of correctly collected evidence that a legal and fair judgment can be rendered, in addition, the trial itself will take place in compliance with one of the leading principles – competition and equality of the parties. At the same time, it should be noted that proof (regardless of the type of judicial procedure) has common features as a certain type of knowledge [3, p. 35].

That is, first of all, proof is a type of cognitive process that is carried out in the order established by law and covers the activities of subjects involved in constitutional proceedings. Hence, the signs of proof follow:

1) evidence is a type of cognitive process. In general, establishing the circumstances of the case is a type of cognitive process, which is characterized by the presence of an object of cognition, the means by which the object is known. As an object of knowledge in constitutional proceedings, for example, relevant legal acts, the constitutionality of which is subject to verification, act. Means of knowledge are means of proof;

2) proof applies to subjects involved in constitutional proceedings. It is worth highlighting three groups of subjects that are in the process of proving:

- the court that must consider and decide the sub-reported case (participates in the collection, research and evaluation of evidence),
- the parties are active participants in the evidentiary process, since they are the ones who collect and submit evidence to the court, participate in their research during the trial,
- other subjects also participate in the proof, performing auxiliary functions (witnesses, experts, specialists).

In one form or another, each of the mentioned subjects is involved in the process of proof in the case;

3) proof is carried out in accordance with the procedure established by law. Evidence is provided in the appropriate procedural form. It is the procedural form that fundamentally distinguishes constitutional justice from other ways of resolving cases [4, c. 22].

As part of the research, the content of the subject of proof in constitutional proceedings and the process of establishing facts that have legal consequences are of interest. The main object of research of the Constitutional Court is the provisions of the Constitution and other normative acts, and in some cases specific life circumstances. Therefore, it is necessary to distinguish between the legal facts established through the analysis of normative legal acts (legal circumstances) and legal facts established through the study of specific life circumstances (factual circumstances) in the subject of proof [15, p. 67].

Therefore, it is logical to define that evidence in constitutional proceedings is a type of knowledge that is carried out in the order established by law and covers the activities of the subjects involved in constitutional proceedings, and at the same time represents a combination of both cognitive and procedural activities. The cognitive component characterizes the process of cognition, and the procedural component characterizes the special form acquired by cognition within the framework of the rules of constitutional justice [16, p. 67].

This reveals the peculiarity of the process of cognition - the establishment of legal circumstances. When deciding the case, the activity of the participants in the process is actually aimed at establishing the true content of the provisions of the Constitution regarding the legal relations under consideration, as well as identifying the constitutional and legal content of the disputed norms. According to A. Golovkina, there is actually a competition between the parties in the understanding of the provisions of normative acts, based on the subjective interpretation of norms, by presenting legal arguments, reasoning, conclusions, etc. The fact of conformity/non-conformity of disputed provisions of the Constitution is established as a provision made on the basis of clarification and comparison of the content of normative acts. Based on this, the content of legal norms in constitutional proceedings is actually a subject of proof, which allows establishing a fact that entails legal consequences. Thus, when establishing legal circumstances, the subject of proof acquires a dual nature. On the one hand, it is a legal fact that entails certain consequences, which is included in the traditional construction of the subject of proof. On the other hand, it is the content of normative provisions, the clarification of which is mostly aimed at the activities of the Court and other participants in the process, which is a feature of constitutional judicial proceedings. [15, p. 67].

It should be noted that, based on the postulates of one of the main laws of dialectics - the law of unity and struggle of opposites, which determines the regularities of the development of natural phenomena and socio-historical reality, the scientist N. Shaptala claims with full reason that the essence of proof in the constitutional court process in cases of official interpretation of the Constitution of Ukraine consists in the following: firstly, it is the use, collection and assessment that contribute to the correct understanding of the issues of "law", i.e. the legal content of the constitutional norm. Secondly, based on its task - to guarantee the supremacy of the Constitution of Ukraine, the Court is obliged to consider the constitutional norm, which is interpreted, from an axiological point of view, that is, to examine the evidence available in the case regarding the conformity of this norm with the "spirit" of the Constitution of Ukraine - spiritual, moral, aesthetic and other values laid down in the Basic Law of the state [5, c. 86].

Examining the procedure of proof and the value of evidence in the constitutional court process, M. Kostytsky claims that this type of court process preserves all the basic principles enshrined in the legislation, the most important of which is competition and equality of parties. But, despite the general principles of judicial proceedings, the constitutional process still has certain distinctive features that are not found in other branch processes [6, c. 25]. At the same time, in the course of proof in a constitutional trial, unlike other types of jurisdictional process, circumstances of an ideal nature are established, and not actual data, facts, actions and events (material circumstances).

It is worth paying attention, note L. Rusnak and O. Shcherbanyuk, that the Constitutional Court of Ukraine is a court of law, not of fact, because this feature directly affects the procedure of proof in it and contributes to the presence of a number of special features that distinguish it from a similar procedure in court general jurisdiction. The most significant difference is already embedded in the very essence of the Constitutional Court as a court of law. This is reflected in the provisions of Article 8 of the Constitution of Ukraine on the rule of law and Article 4 of the Law on the Constitutional Court of Ukraine, which states that this Court is governed primarily by the law, the Constitution of Ukraine, and only then by the current legislation and regulatory acts [7, p. 59].

It should be noted that the presence of activity in the constitutional judiciary to identify the constitutional and legal content of the current law significantly distinguishes it from other judicial processes, where the activities of the subjects are mainly aimed at solving issues of fact, that is, establishing, researching and evaluating the actual circumstances. In this aspect, the characteristic of constitutional judicial proceedings, given by Zh. Ovsepyan, as a peculiar, analytical form of judicial proceedings [17, p. 35] is interesting. It is quite obvious that the presence of this specificity in the constitutional court process gives rise to peculiarities in the methods of proving, in particular, the evidence involved, which is unlikely to be understood as "information about facts". Based on this, it is necessary to unify the terms, rules, and degrees of regulation of evidentiary issues formed in procedural branches, since they are not always

similar. For example, instead of the term "evidence", which usually means information about established facts, such terms as "materials", "documents", "legal arguments" are used. It is the legal arguments of the participants in the constitutional court process that have an independent evidentiary value for revealing the constitutional and legal meaning of the right [18, p. 64]

The presence of certain specifics in the constitutional court process allowed scientists to consider it as one of the reasons for the existing volume of legislative regulation of evidence. Thus, according to A. Blankenagel, strict procedural rules in constitutional proceedings are impractical, as situations that are not provided for by any procedural norms inevitably arise. The body of constitutional jurisdiction must have the right to act at its discretion, that is, independently formulate missing procedural elements, new rules [19, p. 35]. However, the constitutional judicial process is a way of exercising the right to judicial protection, including that of citizens. The right to judicial protection presupposes the existence of guarantees that would implement them in full and ensure effective restoration of rights in the form of justice that meets the requirements of justice. Therefore, the mechanisms for exercising the right to judicial protection in the form of constitutional proceedings, including the issue of proof, should be regulated so that they become clear and effective primarily for citizens. Taking into account the special role of the body of constitutional justice in the implementation of legal protection of the Constitution, it is necessary to ensure greater stability in the legislative regulation of these issues.

5. Conclusions.

Therefore, the constitutional court process is a special environment that differs from other court processes existing in our country: in the field of activity, powers of judicial bodies, subjects, stages, legal force of decisions. Peculiarities of the environment where proof is carried out certainly give rise to specificity in the subject of proof, subjects, content and types of proof. This creates the need for more detailed regulation of proof and evidence in constitutional proceedings. In our opinion, proof is a type of cognitive process that is carried out in the order established by law and covers the activities of subjects involved in constitutional proceedings. And therefore, evidence in constitutional proceedings is a type of knowledge that is carried out in the order established by law and covers the activities of the subjects involved in constitutional proceedings, at the same time it represents a combination of both cognitive and procedural activities. The cognitive component characterizes the process of cognition, and the procedural component characterizes the special form that cognition takes within the framework of the rules of constitutional justice. At the same time, the construction of the subject of proof in constitutional proceedings follows (corresponds) to the construction of the subject of proof adopted in national law. However, we draw your attention, it would be worthwhile to normalize the specificity of the subject of proof in constitutional proceedings as a process aimed at solving legal issues.

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