CLASSIFICATION OF EVIDENCES IN THE CONSTITUTIONAL JUDICIAL PROCESS

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Abstract. The article is devoted to the research of the philosophical and legal criteria of the classification of evidences in judicial process.

Using separate classification features of evidences in other litigations, the author has established his own classification system of evidences in a constitutional judicial process based on their division into philosophical and methodological (logical, axiological, ontological, epistemic) and other features: belonging to a certain type or variety (material things and personal oral); Dependence on the stage of the constitutional proceeding (primary preliminary, additional preliminary and additional secondary), relation to the subject of evidences in the case (direct and indirect) and their temporal factor of their application in the activities of the Court (present and future (unified)).

At the same time, the author stresses that regardless of the types of evidences in the constitutional judicial process, their general characteristics should be: legality, authenticity and sufficiency.

Keywords*: evidence, proving, expert, information, classification, constitutional judicial process, truthfulness, cognition.*

Introduction

In the legal literature, the problems associated with the functioning of the institutions of constitutional judicial control, was studied by many domestic scientists, in particular: O. Bandura, Y. Baulin, V. Boiko, V. Bryntsev, Y. Groshevyi, N. Drozdovych, A. Dubinskyi, V. Kampo, N. Klymenko, A. Koni, V. Konovalov, M. Kostytskyi, N. Kushkova-Kostytska, V. Maliarenko, O. Myronenko, M. Myhienko, M. Pogoretskyi, B. Poshva, P. Rabinovych, A. Selivanov, M. Siryi, I. Slidenko, A. Stryzhak, S. Shevchuk, V. Shepitko and many others.

Nevertheless, despite a large number of publications and scientific works, certain topical issues, in particular, the classification of evidence in a constitutional court proceeding, are still not well-researched, which to a certain extent results in conflicts and signs of legal uncertainty in legislative requirements regulating the activities of the constitutional jurisdiction body as an important element of the national mechanism for the protection of human rights and fundamental freedoms.

The theoretical basis of the research is the work of domestic and foreign scientists in the field of constitutional law and constitutional justice, as well as regulatory acts regulating the activities of the Constitutional Court of Ukraine (hereinafter - the Constitutional Court, the Court).

The purpose and tasks of the research are:

- definition of the philosophical and legal content of the classification of evidence in the constitutional court process, comprehension of the constitutional principles of their application in the theory and practice of constitutional justice.

Presenting main material

Classification - a system of distribution in groups according to predetermined attributes. In some cases, the term categorization is used in terms of the distribution of objects in the category. Since the classification forms at least a few groups (classes), it is often defined as a process of formation of classes [1, p. 491].

With regard to the classification of evidence in the constitutional court proceedings, it should be noted that this issue, to this day, figuratively speaking, is "terra incognita", both in the science of constitutional law and in relation to the legislative regulation. In particular, neither the Law of Ukraine "On the Constitutional Court of Ukraine" (hereinafter referred – the Law on the Constitutional Court, the Law) [1], nor the Rules of the Constitutional Court of Ukraine (hereinafter referred – the Rules of Procedure of the Constitutional Court) [2], generally do not contain the definition of «evidence in a constitutional court proceeding», not to mention their classification, but among the few publications in the domestic legal periodical, it is necessary to highlight only the scientific works of M. Koziubra and M. Kostitsky.

So, M. Koziubra shares evidence in a constitutional court proceeding on the following:

- provided by the parties in a court session or requested and joined by the court at their petition;
- collected, summarized and weighted (estimated) on their own initiative of the court, which for general courts (civil, criminal, etc.) is in principle unacceptable*.

Moreover, cases are not unique, - notes M. Koziubra, - when exactly the collected, summarized and weighted (estimated) on their own initiative evidence of the court, serve as the basis for the court decision. These peculiarities of constitutional justice impose an imprint on the forms of consideration of cases in the constitutional court, the level of regulation of the procedure for such consideration, the ratio of scientific and artistic methods and techniques in constitutional proceedings, etc. [4, p. 179].

It's worth agreeing, but you should pay attention to the fact that:

- Firstly, the question of the participation of "parties" in the constitutional court proceeding is debatable. The Law on the Constitutional Court, as well as the Rules of the Court, refers not to the "parties" but to the "participants" of the constitutional court proceeding (for example, part 3 of Article 60, Articles 70 - 74 of the Law on the Constitutional Court, part 3, 4, 5, 6 § 71, clauses 1, 3, 4. 7 parts 3, 72, part 5 § 73, part 3, § 75 of the Rules of the CCU);
- Secondly, in accordance with Article 69 of the Law, The Board, the Senate, or the Grand Chamber, when preparing a case for consideration or during constitutional proceedings in a case, may demand and obtain from the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the Prosecutor General, judges, and other government authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities, officials, enterprises, institutions, organisations of any types of ownership, political parties or civil groups copies of documents, materials or other information relevant to the case (part 1).

These materials or information, after summarizing and evaluating them, can in fact be recognized by the Court as evidence in the case. However, the Law does not refer to "gathering evidence on initiative of the Constitutional Court," but about "requiring" materials or information to ensure the completeness of the case. And this, in our opinion, is correct, since the Court is not, neither the investigation body nor the body of inquiry, therefore, gathering evidence is not its case. As for the reclamation of materials, which, as noted above, can be further recognized as evidence in the case, even on the basis of the title of Art. 69 of the Law "Ensuring complete consideration of a case", these powers may be used only in cases when:

- the evidence provided by participants in the constitutional court proceedings is not sufficient for the adoption of an objective and reasoned decision in the case;
- The evidence provided by participants in the constitutional court process requires additional verification or clarification.

In this context, the position of M. Kostytskyi, who analysed the content of evidence in the constitutional court process, is more complete, states that evidence may be provided as subjects of the right to appeal to the Constitutional Court (i.e., participants of the constitutional court proceeding, and not to the parties*), and to be formed on the basis of

* The notion of inadmissibility in principle of collecting a court of general jurisdiction on its own initiative is not entirely accurate since such actions are foreseen in the domestic administrative judicial system (author's note).

* Note the author

information received by judges, Board of judges, etc. [5, p. 162].

Also it should be noted that, given the insufficient level of philosophical and legal research and the legal definition of the concept and classification of evidence in the constitutional court process, these issues in other types of litigation, although they did not go away, but much better investigated and regulated. In particular, it is possible to provide several scientific definitions of the concept and classification of evidence in criminal, civil and other litigation from foreign and domestic sources.

For example, according to one version: "Evidence - this information about the circumstances in the case, which was obtained by the court from sources - means of proof, on the basis of which the court establishes the presence or absence of circumstances in this case. Setting the circumstances in the case, the court evaluates the evidence, specifying, in particular, their truth or falsehood [6].

As Professor of Law K. Debes (Ethiopia) in this context, states: "Evidence is something that was filed in court with the purpose of proving or refuting the circumstances or issues that are the subject of a judicial investigation. The court perceives them or does not perceive them, in particular, based on their truthfulness or falsehood" [7, p. 2 - 3].

In our opinions, it should be noted that, sub-statements on the truthful and unjustifiable could not be the basis for the foundation of the cluster, for that number in the constitutional court process, going out such:

- the proof cannot be false, as for its own legal nature it is any actual data received in the procedure provided for in the procedure, on the basis of which the presence or absence of facts and circumstances that are relevant to the resolution of the court is established. Namely, *a priori* proof is the truth about facts or circumstances of importance for the solution of a case, and "false truth" - a logical twist;
- false as intentional (falsified) and unintentional (for example, as a result of a conscientious mistake by a witness or other party to the trial), only information as a form of the transfer of information by the subjects of proof can be considered.

Instead, evidence, in accordance with procedural law, is recognized as such only after an assessment of their reliability, that is, verification, in particular, of the truthfulness of the information provided to the Court. In the event that the court finds that the earlier evidence was based on false information, it does not become false, but simply ceases to be proof of the case.

The Federal Rules of Evidence (US), in particular, state that evidence is a means by which "any statement is made of a fact that is credible for consideration and includes allegations of assertions and assumptions, court reports, presumptions of law, and judicial review. There are several types of evidence, depending on the form or source of their receipt: testimony (for example, oral or written statements, such as affidavit); "exhibits" (physical objects); documentary material or evidence that is permissible in the trial" [8].

According to the classification of judicial evidence of the Commissioner of the High Court of the West (Nigeria) M. Duraimini, judicial evidence can be divided into different types on certain grounds, especially depending on their nature:

- direct and indirect, primary and secondary, insufficient and sufficient, convincing and most convincing, as well as finite;
- direct and indirect;
- oral and documentary;
- pre-formed and provided in person by the participants in the process and received at the initiative of the court [9].

A popular legal resource, «InBrief», which provides information on the laws of England and Wales, offers the following division of evidence for species:

"- oral testimony: oral utterance made by the witness, sworn in an open court session, and set forth as evidence of its veracity;
- written statements made by witnesses, which are recognized in the proceedings as evidence;
- expert testimony and expert opinions:
- real (tangible) evidence: it is usually a certain material object that is created for verification or to prove its presence, and in order for the court to conclude on its status or value (for example, torn clothing than, destroyed property, burned documents, etc.);
- a rumour is a statement that was not made in verbal evidence in the proceedings;
- documentary evidence: documents, including digital records, removed from

communications, etc., are provided as evidence to the court "[10].

R. Murphy, a professor at the University of Law School in Addis Ababa (Ethiopia), states that evidence of law is a set of legal rules developed and adopted for management, which governs what should be submitted to the court to support its decision:

- facts that are relevant to decisive judgments and which do not require confirmation;
- real evidence (e.g. documents or exhibits) and oral evidence;
- evidence that can be confirmed by authoritative texts;
- facts recognized at an open court hearing (examination, testimony, etc.) [11].

The categorization of evidence, of course, has the right to life, however, in our opinion, they are too formalized, it seems that their authors underestimate the importance of one of the main tasks of the classification of evidence, namely, it should facilitate the proper organization of the process of their collection, research and evaluation, as well as determine their place in the system of evidence in the case. In addition, it is believed that by expounding the evidence - these, figuratively speaking, "the pebbles on the scales of Themis", on shelves, should not be limited to their purely formal "weight" (direct - indirect, documentary - oral, etc.), but also take into account their philosophical component. [11].

As Professor at the University of Casey Western University (Canada) L. Loewinger, wrote: "The main difficulty in defining the essence and content of the concept of evidence is that the distinction between" facts "and" thoughts "means some kind of misleading differentiation. There is no rigid distinction between "subjective" and "objective" or between "perceptions" and "conclusions" observed in the phenomena with which the proof is being dealt with. Undoubtedly, these dichotomies serve important functions in the development of the process of cognition, but they are not precise, adequate, and sometimes relevant to contemporary scientific thought and jurisprudence [12, p. 159 - 160].

In the national scientific periodicals, as E. Kovalenko notes, the following classification of evidence is the most common:

- Depending on the relation to the circumstances to be proved - direct and indirect;
- Depending on circumstances aggravating or mitigating responsibility - indictment and acquittal;
- according to the source of information (in this case, both evidence and source are classified) - primary and derivative [16, p. 39 - 40].

According to V. Nore, evidence in the trial is classified according to the following features:

- personal and material, depending on the formation and use of factual data (evidence) by the subjects of proof;
- by type of evidence: received from victims, accused, witnesses, etc.;
- the division of which is conditioned by the nature of the subject's connection with the crime (objects of a criminal offense, means and objects of criminal activity, etc.);
- primitive and derivative, the qualification of which is the presence or absence of intermediate sources in the evidence [14, p. 46].

M. Vitruk in the content of evidence in the constitutional court process includes "information, data of a legal nature, which is received and operated by the body of constitutional jurisdiction in the process of consideration of the case" [15, p. 342].

Quite interesting is the classification of the evidences of I.Kotiuk, which is based on the separation of elements of knowledge in the proving, which, in our opinion, can be used as one of the forms of systematization of evidence in the constitutional judicial process. In particular, the scientist refers to the above elements:

- informational that emphasizes the role of knowledge in proving;
- logical that containing two aspects: certifying, consisting of procedural rules for obtaining evidences, established by law, to guarantee the authenticity of the information received and the logic that involves the use of regularities and laws of logic to substantiate the decision on the case on the basis of the information received;
- the psychological, responsible for the formation of internal conviction and is the basis for assessing the system and the set of evidence [16, p. 12].

In this context it should be noted that the principles and forms of the classification of I.Kotiuk, to a lesser extent, are influenced by formalistic measurements. It is worth accepting this, especially in the context of the subject matter of this article, as the constitutional proceeding, to a greater extent for other proceedings, is close to the scientific and cognitive activity [17].

Indeed, as the analysis of the Constitutional Court case law shows, its final acts are the result of the mental activity of judges, which implies the application of the methods of axiology as a science of universal values, ontology in the context of studying the challenges of today, epistemology for knowledge in various fields of society, logic, dialectics, systemic analysis, hermeneutics and many other philosophical and methodological techniques adapted to the goals and objectives of constitutional justice.

Thus, in our opinion, one of the forms of classification of evidences in the constitutional judicial process should be based on their philosophical and methodological features:

- logical evidences, that is, obtained as a result of the mental activity of the subject of evidence in relation to the study of the information provided with the use of techniques and methods of formal logic;
- axiological evidences, that are, oriented towards the protection of universal values;
- ontological evidences, which reflects the connection of issues that are considered during the constitutional judicial process with the realities of life in society;
- epistemic evidences, that are, formed on the basis of knowledge gained from the study of achievements in various fields of modern science.

The author also believes that classification of evidences in a constitutional court proceeding may also be applied to their systematization by the sources of information on the basis of which these evidences were formed (formal signs), in a certain analogy with the above examples of classifications of evidence in litigation of general jurisdiction:

firstly, by type: material things (legal acts, documents, things, etc.) and personal verbal statements - speeches of participants in the constitutional judicial process, testimony of witnesses, experts and specialists advice, etc.;

and secondly, depending on the stage of constitutional proceedings, on:

- primary preliminary, that are, formed on the basis of the information provided by the subject to the Court with the constitutional petition, appeal or constitutional complaint;
- additional preliminary ones - which are formed on the basis of information received by the judge-rapporteur during the preparation of case materials for consideration, which in turn are divided into external (information was received from state authorities, scientific institutions and higher educational institutions, etc.) and internal (provided by the relevant services of the Secretariat of the Court);
- additional secondary - formed during the consideration of the case by the Boards, the Senate and the Grand Chamber of the Court, on the basis of information received from both parties in the constitutional proceeding and at the initiative of the Court;

It seems appropriate to another form of classification of evidences in the constitutional process to determine their division in relation to the subject of evidence in the case:

- direct evidences, that are, directly indicate the circumstances or facts, the presence of which is subject to proving, or in their absence;
- indirect evidences - containing facts which had an indirect effect on the occurrence of legally significant circumstances, which resulted from the petition to the Court of the subject of a right to a constitutional petition, appeal or constitutional complaint.

Although domestic constitutional justice does not have a well-defined case-law, however, in our opinion, the classification of evidences in a constitutional court proceeding will be incomplete without taking into account their temporal features, in particular, in the context of influence on the formation of the legal position of the Court:

- present evidences which relevant to the formation of a court decision in a particular case;
- promising (unified) evidences which formed the basis of the legal position of the Court and can be used in the future.

In conclusion, it should be noted that the general classification features of evidences, irrespective of the source of information on the basis of which they were formed (the relation to the issues dealt with by the court, temporal signs, etc.), the general classification

features of evidences in the constitutional proceeding are:

- legality of obtaining factual data;
- authenticity, which is in accordance with the validity of factual data obtained from legal sources, as a result of a thorough examination of the evidences and its sources during the constitutional proceeding;
- affiliation as the ability to substantiate, prove or refute any circumstance to be proved in the case;
- sufficiency, which is defined as the presence in the case of such a collection of evidences gathered, which does not call into question the true finding of the presence or absence of circumstances in relation to the subject of proving necessary for establishing the objective truth and making the correct decision in the case.

Conclusions

1. Acts of domestic legislation, which regulated the activities of the Constitutional Court of Ukraine do not contain the definition of "evidences in the constitutional judicial process" and their classification, little-researched this question remains in the science of constitutional law.
2. Definition of the essence and content of the concept and principles of the classification of evidences follows from the statutory tasks and principles of sending the appropriate type of justice.
3. According to the Law on the Constitutional Court of Ukraine, in order to ensure the completeness of consideration of the case, the Board, the Senate, the Grand Chamber of the Court, during the preparation of the case for consideration and constitutional proceedings in the case, may demand from the state authorities, local self-government bodies, officials, enterprises, institutions, organizations all forms of ownership, political parties, public associations copies of documents, materials, as well as information relating to the case. These materials or information, after summarizing and evaluating them, may be recognized by the Court as evidences in the case. However, the Law does not refer to "gathering evidences on its own initiative of the Constitutional Court of Ukraine,", but "to demand" materials or information to ensure the completeness of the proceedings, therefore these powers should be used only in cases when:
   - the evidences provided by participants in the constitutional court proceedings is not sufficient for the adoption of an objective and reasoned decision in the case;
   - the evidences provided by participants in the constitutional judicial process requires additional verification or clarification.
4. Using separate classification features of evidences in other trials, the author has established his own classification system of evidences in a constitutional judicial process based on their division:
   4.1. The basis of one of the forms of classification of evidences in the constitutional judicial process must be laid their philosophical and methodological features: - logical, axiological, ontological, and epistemic.
   4.2. The author also believes that for the classification of evidences in a constitutional court proceeding, it can be used the systematisation according to the sources of information on the basis of which these evidences were formed (formal features) in a certain analogy with examples of classifications of evidences in litigation of general jurisdiction:
   - by types: material things and personal oral
   - depending on the stage of constitutional proceedings: primary preliminary, additional preliminary (external and internal), additional secondary.
   4.3. Another form of classification of evidences in the constitutional judicial process, it is proposed to determine their division in relation to the subject of evidences in the case: - direct and indirect (mediated);
   4.4. Although domestic constitutional justice does not have a well-defined case-law, however, according to the author, the classification of evidences in the constitutional judicial process will be incomplete without taking into account their temporal features, in particular, in the context of the impact on the formation of the Court's legal position: present evidences and perspective (unified).

4.5. General classification features for evidences, regardless of the source of information on the basis of which they were formed, the relation to the issues dealt with by the court, temporal signs, etc., the general classification features of evidences in the constitutional court proceedings are: legality, authenticity, affiliation and sufficiency.

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