Inquiry and Proof in Jurisdictional Process

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Abstract. *The article analyzes theoretical approaches in the legal science to the essence and the relation between the concepts of "inquiry" and "proof". The mechanisms of inquiry and proof in the jurisdictional process are highlighted. The purpose and object of cognition and proof are determined.*

Keywords: *inquiry; proof; mechanisms; goal; subject.*

Problem statement

The problem of the correlation of inquiry and proof is one of the fundamental in the area of the jurisdictional process. Jurisdictional legal relations is a multi-level reflection of legal proceedings, in which the law defines the participants and competent authorities. At the level of generalization, they are a system represented by several levels: the functions inherent in certain participants in the proceedings according to their purpose and / or interests; separate stages of legal proceedings, the mechanism of which leads to their logical and consistent order; a set of procedural actions aimed at ensuring the rights and freedoms of the participants in the process, the collection and evaluation of proof, the issuance of a decision, etc. The place of inquiry and proof at each of these levels requires a separate detailed examination.

Analysis of recent research and publications. The problem of the process and the peculiarities of inquiry and proof in the legal sphere are devoted to numerous works of domestic and foreign scholars. (V. Bihun, L. Biletska, K. Enhel, S. Haak, V. Ishchenko, K. Kalynovskyi, D. Kei, K. Klermont, A. Kukhta, O. Lytvyn, L. Nikolenko, I. Reshetnikova, V. Shepitko, Dzh. Vitman, V. Zelenetskyi, L. Zonhzhi, та ін.). However, in the context of the equilibrium of such a system, this problem was not previously covered.

The purpose of the article is the consideration of the theoretical foundations of the relation of inquiry and proof in the jurisdiction process.

Presentation of the main research material. The analysis of scientific publications makes it possible to state that there are two points of view on inquiry and proof in the jurisdiction process [1–4]. Let's examine them in more detail.

Representatives of the *first direction* identify the concept of inquiry and proof. In their opinion, the activity of participants in the process is to establish with the help of procedural means and methods specified in the law, the presence or absence of facts necessary for the resolution of the case (the establishment of truth). The subjects of such activity include the participants in the court session and other persons involved in the case. It consists of a series of consecutive procedural actions: testimony of the parties and other interested persons regarding the facts to be proved; gathering evidence, research and evaluation.

Representatives of the *second direction* distinguish the concept of "inquiry" and "proof" and emphasize that these are independent types of procedural activities, and the concepts differ among themselves in a number of features.

Proponents of both the first and second points of view justify them, based on the legislative provisions according to which each party must prove the circumstances referred to in justifying their claims or objections. However, the former consider that it is not necessary to admire the evidence in advance, since only the court: determines the subject of evidence; in necessary cases, assists individuals in providing evidence activity. The second denies: it is necessary to clearly distinguish between cognitive and evidence. On a practical side, it defines the duty of a particular subject to prove the facts to which he/she refers. Since the court does not have preprocess information, it can be the subject of only knowledge, and only at the stage of making a judicial decision becomes the subject of evidence.

In our opinion, the position of combining and harmonizing the above concepts is more interesting. Therefore, we believe that *knowledge in the jurisdictional process* is a cumulative result of the interaction of two separate processes: knowledge and proof, that is, it is not necessary to divide these phenomena as separate entities. They should be taken into account in the complex due to the interconnectedness and interdependence of the components.

Accordingly, the proof in the legal field should be understood as a certain process of knowledge of the subjects of this process, which is realized as the collection, verification and evaluation of evidence. In this case, the right is the area of specification of the general laws of being in modern conditions in general and justice in particular. That is, knowledge and evidence in the jurisdictional process is based on the principle of "here and now", on the rules of life of a particular society.

It is advisable to approach the analysis of knowledge and evidence in the jurisdictional process from the point of view of procedural and legal regulation and consider knowledge and proof not as separate activities for the submission, study and evaluation of evidence, but as its mechanisms. We believe that such a conceptual approach will enable to identify all the system-forming components of knowledge and evidence, which will contribute to a more accurate and complete understanding of the essence of these phenomena.

We understand the broad scientific interest in problems of cognition and proof in the legal plane. However, despite the popularity of the subject, the study of publications on this topic makes it possible to argue that the doctrinal use of the terms "knowledge" and "evidence", their legal nature and place in the structure of procedural and legal regulation until they have the proper theoretical justification.

In our opinion, it is necessary to investigate the mechanisms of these phenomena as components of the general system of procedural and legal regulation: this sphere unites all legal phenomena associated with knowledge and evidence at all stages of the jurisdictional process. In turn, as an integral complex and system education, the jurisdictional process has its own elements that characterize it and reveal its legal nature. Each of these elements plays an independent role in the mechanism of knowledge and proof. At the same time, their full value is revealed only in their dialectical interaction.

Consider the components of knowledge and evidence in the jurisdictional process as such elements that are of independent importance and are characterized by specific methods of influence. These processes, in our opinion, are a system and are subject to the actions of the laws of structural functioning. In particular, the aggregate of their properties is a result expressed in the functional purpose of this legal instrument.

The logic of the operation of this system is obvious from its name. From the formal point of view, knowledge and evidence in the jurisdiction process serve to translate the rules of evidence of the law into the practical activities of the subjects of knowledge and evidence regarding the establishment of the actual circumstances of a particular case. We believe that such an approach to understanding the mechanism of knowledge and evidence in the jurisdictional process makes it possible to consider it not as a mechanical set of certain stages, but as an actual social and legal phenomenon.

Based on the above, we propose our vision of what is a fundamental basis, guided by which participants in the jurisdictional process are able to operate with knowledge and evidence. Thus, in the system of coordinates

of procedural legal relations in order to know and prove certain events, the following *mechanisms of influence on the social and legal reality should be applied among themselves:* the rules of procedural law; legal facts mediating procedural legal relationships; procedural legal relations; procedural procedures and acts of law enforcement; procedural legal culture; methods (methods, techniques) of proof; legal consciousness of the subjects of evidence.

The first three mechanisms are rather documentary, that is, they constitute the provisions enshrined in the relevant acts. Other components provide for the consideration of the psychological aspects of legal relationships and require more detailed disclosure.

In contrast to the legal procedure, the procedural procedure is a term that does not have a legislative definition and a clear unambiguous content. Under *procedural procedures,* they usually understand the procedure for committing certain procedural actions – demanding evidence, reviewing their location, questioning a witness, etc.

Procedural acts of application of the rules of law are considered in the following aspects:

– an independent legal category as a legal means of public administration of society;

– one of the legal forms for the exercise of state functions;

– organizational form of activity of state bodies and certain public organizations;

– the most important means of realization of legal norms;

– Individually defined legal acts;

– a special legal fact, etc.

In our opinion, law enforcement acts directly affect the emergence, development, change and termination of procedural legal relations in the jurisdiction. Accordingly, they are to a large extent consistent with the essence of procedural legal facts that the subject of the jurisdictional process can operate in the course of knowledge and proof. Although the procedural norms and legal relationships nevertheless cover the notion of procedural acts.

Legal culture and legal awareness – the concept is closely interconnected. In this context, the legislator requires the observance of high standards precisely when knowing and proving it in the jurisdictional process. For example, the court is not entitled to take into account the evidence obtained by an investigator from an unsatisfactory level of legal culture who obtained those evidence in an unauthorized search by way of tampering with facts, etc.

We consider the legal culture of a lawyer as an individual and a professional as a characteristic of the state of development of the individual's sense of justice and of his activities in the legal field. In addition to the impact of legal education, the level of legal culture determines the individual-psychological and age-specific features, as well as the impact of a particular environment with an appropriate system of values.

In our opinion, all this is influenced not only by the legal culture of the person, but also its legal consciousness and professional culture. Accordingly, knowledge and evidence in the jurisdiction process is related to how the person perceives the right, as the attitude is manifested in its actions, emotions, and the like. All this characterizes the level of respect for the law and other manifestations of legal culture and legal consciousness. In turn, the above mentioned indicators of the development of a lawyer, the more effective his activity in the field of knowledge and proof in the jurisdiction.

Cognition and proof in the jurisdictional process is impossible without the right choice of legal instruments: *methods, means, approaches* that directly affect the effectiveness of its results.

Procedural legal fact and procedural legal relations are also mechanisms of knowledge and proof in the jurisdiction process. They contain, in their structure, the elements related to the evidentiary activity. The first element is the rules of procedural law regulating knowledge and proof and defining their purpose, principles, order and limits of their implementation.

Element of the mechanism of knowledge and proof in the jurisdiction process are only those rules that determine the procedural aspect of establishing the factual circumstances of the case, in particular, the activities of participants knowledge and evidence, the procedural form of application of methods of proof, evidence, etc. For example, in proving the case, the person must submit evidence that confirms or

refutes one or another circumstance, but their legal qualification is exercised only by the court. When a person is involved in a case, she refers to the legal rules that have been violated, and justifies the affiliation of a particular norm to the circumstances of a particular case.

Cognition and proof here are expressed in the definition and justification, which exactly the rules of substantive law have been violated. After all, they protect personal non-property and property rights, determine the procedure and conditions for their implementation, and in many cases, the content of acts that violate these rights.

This argument can be deduced in the opposite direction. Thus, the mechanism of procedural regulation, which is the system of procedural and legal means, begins to operate when the implementation of legal norms becomes impossible or difficult in the absence of definite rights and obligations in the relevant decision of the jurisdiction authority.

In our opinion, the rules of procedural law, which govern the lawyer in the process of knowledge and proof in the jurisdiction, can be grouped as follows:

– principles of procedural law, which are realized in cognitive and evidentiary activity;

– general provisions on knowledge and evidence (evidence and means of proof);

– the rights of persons involved in the case, in relation to proof, namely knowledge and evidence, the grounds for exemption from proof;

– the procedure for obtaining evidence by a court: the submission of evidence by the persons involved in the case, judicial orders for the gathering of evidence, the demanding of evidence;

– the order of storage and return of evidence;

– the procedure for appointment of forensic examination;

– the order of research and evaluation of evidence;

– peculiarities of evidence in the review of court decisions.

We believe that knowledge and evidence in the jurisdictional process can also be regarded as tools by which a certain picture of objective reality is created (in the legal context). Let's pay attention to what exactly they operate. It is a question of *procedural legal facts,* which after their classification by means of knowledge and proof in their totality constitute a procedural actual system.

The list of facts is defined in the legislation: they must contain the data necessary for the decision of a concrete case. The essence of procedural legal facts in the mechanism of evidence is revealed during the analysis of their main features. Accordingly, procedural legal facts are those in which there are:

– social content, that is, actions that in one way or another relate to the rights and interests of society, state, individuals, etc., and therefore require legal regulation;

– objectivity, external manifestation, that is, actions, expressed on the outside, or inaction as a conscious refrainment from the implementation of the provision of the legal norm;

– normative – only the action of the participant of the process is recognized, the legal model of which is mentioned in the procedural law and for which the law usually provides a specific legal result directly;

– concreteness, individuality, that is, actions generated by certain subjects and carry specific social and legal content. The procedural law defines a list of actions that may be committed in the course of proving in the jurisdiction of the court, and the circle of persons who have been granted the right to commit such acts or who are obliged to commit them or who have the authority to commit them;

– ability to create legal consequences.

Thus, in the process of knowing and proving, based on legal norms and upon certain legal facts, procedural legal relations are transformed into a real system of actions of subjects of the jurisdictional process. Continuing this opinion, we can note that procedural legal relations within the mechanism of knowledge and evidence create a certain balance of authority of the relevant subjects:

– the persons involved in the case, realize their rights;

– participants in the jurisdictional process, performing duties in the field of evidence-based cognitive activity;

– a court exercising its powers of proof.

Thus, in the mechanism of knowledge and proof of procedural legal relations, they perform

the function of distributing legal instruments among the participants of evidence.

The structure of building the mechanism of knowledge and proof can not exist without proper evidence, even the regulation of the jurisdictional process as such depends on the presence or absence of evidence. This is a reflection of the principles of competition and defines a qualitative characteristic of the jurisdictional process in view of the active behavior of the participants in the case, which manifests itself in the process of *operating evidence – that is, knowledge and evidence.*

In view of the above, we propose the definition of *knowledge and evidence in the jurisdiction process* – it is a component of the mechanism of procedural and legal regulation, which is expressed in the finding and use of valid evidence in the case, through which the disclosure of the circumstances of the case and obtaining knowledge about the facts that have value for her.

The purpose of cognition and proof – the establishment of objective truth, the solution of the case in such a way that, on the one hand, to achieve compliance findings in the case of the presence/absence of certain facts with real reality, on the other – to identify all legally significant signs of these facts. The purpose of knowledge and proof can be considered achieved only when all these conclusions correctly reflect the objective reality, which confirms their truth.

In the context of our study, the *subject of knowledge* is the parties, properties and relationships with the outside world, identified in the jurisdictional process and transformed into an object of making cognitive efforts to reveal their specific patterns and structure. *The subject of proof* should be considered: circumstances substantiating the claims and objections of the persons involved in the case; other circumstances of importance for proper consideration and resolution of the case; in fact, the very event of the offense; guilt of the person who is being prosecuted.

That is, the subject of knowledge and evidence embodies all the facts that are important for the jurisdictional process, which are determined by evidence. However, despite the fact that the parties point out certain circumstances in their claims and the objection to the claims of the opposing party, by providing evidence that confirms them, the final range of facts and circumstances relevant for the case is determined by the court.

Along with the notion of the subject of proof in the theory of criminal-procedural law, the term "circumstances of importance to a case", whose content is the circumstances which are subject to proof, as well as the so-called auxiliary (intermediate or evidence) facts used to establish the circumstances, are used. which belong to the subject of proof.

Conclusions

Inquiry and proof in the jurisdictional process are considered as interdependent and interconnected. At the same time, the proof is a certain process of knowledge, and together they act as a toolkit, through which creates a legal reality with the use of mechanisms of influence on the social and legal reality. Cognition and evidence in the jurisdictional process is an integral part of the mechanism of procedural and legal regulation. The subject of knowledge is the legal realities for the disclosure of their specific patterns and structure, subject of evidence - legally significant facts that characterize a particular case. The boundaries of one and the other determine the termination of the specified activity, provided the goal is achieved.

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