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INSTITUTE FOR EVALUATION OF EVIDENCE IN CIVIL PROCEEDINGS

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Abstract:

The article provides feedback on the procedure, methods and principles of evaluation of evidence submitted to the court in civil cases (with and without disputes). The need for evidence evaluation, procedural possibilities and consequences, as well as the features of evidence evaluation in the example of some civil cases are described. In addition, scientific views are given on the methods of evaluating evidence on the basis of substantive and procedural law, as well as on the basis of the judge's internal confidence.

Keywords: Civil process, participants in the process, parties, third parties, evidence, explanations of the parties, examination of evidence, examination of evidence, comparison, evaluation of evidence, internal confidence of the judge, trial.

The concept of evidence evaluation is not defined in the civil procedure legislation, but Article 80 of the CPC defines the rules of evidence evaluation, according to which the court evaluates the evidence in the case on the basis of internal confidence based on comprehensive, complete, objective and direct examination. As a rule, the judge's internal confidence should be formed during the trial on the basis of an examination of the evidence, not in advance. After examining each piece of evidence separately and the set of evidence in a coherent manner, the court shall establish the circumstances relevant to the case and determine the degree of their proof.

A judge's internal confidence has a subjective and objective basis. The objective aspect of internal confidence is based on the results of a comprehensive, complete, objective, and direct examination of the evidence available in the case. According to the objective aspect of internal confidence, the court must have a conclusive opinion on each case and exclude other options in this case. The subjective aspect of internal confidence depends on the judge's level of legal literacy. The content of a judge's inner confidence embodies his worldview, knowledge, potential, qualifications, experience and skills. In turn, these components represent the subjective factors (aspects) of internal trust.

The objective factors (sides) of internal confidence depend on and rely on the real situation in the trial, the substantive and procedural legislation, the scope of the evidence examined at the trial.

Evaluation of the evidence on the basis of the judge's internal confidence is ensured, first of all, by the fact that the decision is made in a separate room (consultation). According to Article 250 of the Criminal Procedure Code of the Republic of Uzbekistan, the presence of other persons from the court hearing the case in a separate room (consultation room) is not allowed when making a decision on the case. This prohibition, established by law, first serves to eliminate the possibility of external influence on the assessment of evidence by the court. Second, when a case is heard by a panel of judges, a judge who disagrees with the panel's decision shall have the right to express his or her views on the case in a separate written form. (Part 3 of Article 19 of the CPC). In this way, the law of civil procedure provides an opportunity for each judge hearing the case to express his or her inner confidence.

No evidence has a pre-determined high legal force for the court. In the opinions of foreign and national scholars who have studied this issue (MK Treushnikov, Sh.Sh. Shorahmetov, Z.N.Esanova, F.B.Ibratova, etc.), no argument (evidence) is a definitive solution for the court. it is acknowledged that each argument (argument) must be evaluated along with other arguments[1]. In general, while this approach is correct, it does not fully disclose the content of the problem under consideration.

[1] Треушников М.К. Судебные доказательства. Монография. 5-е изд., доп.- Москва :Городец, 2017. -304 с.
Шораҳметов Ш.Ш. Ўзбекистон Республикасининг Фуқаролик процессуал ҳуқуқи. Дарслик Лотин ёзувида.- Тошкент: ТДЮИ, 2007. -556 б.
Esanova Z. The role of some procedural institutions in conducting court cases: on the example of civil cases // Review of law sciences. – 2018. – Т. 2. – №. 2. – С. 5.
Ibratova F., Esenbekova F. Genesis and evolution of legislation on conceptional procedures in the republic of Uzbekistan //Polish Journal of Science. – 2021. – №. 38-2. – С. 20-24.

KB Ryzhkov, noting that the evidence does not have a predetermined legal force, implies the following: a) as a result of incomplete regulation of the examination and evaluation, this or that evidence, as well as the behavior of the subject of proof remains relatively insignificant; (b) that in the formation of the internal confidence of the court, certain types of evidence have precedence over other evidence; v) the absence of substantive rules governing the particular legal force of certain facts (for example, notarized documents, court decisions, documents of state bodies on registration of civil status, as well as other cases)[2].

In fact, having a predetermined higher power implies that under the law, one argument is superior to another. However, no evidence should have a predetermined priority for the judge. A separate legal regulation of a particular type of evidence is not sufficient: the conduct of an unreliable witness; the reliability of written evidence rather than oral evidence; the evidence presented by persons with special legal status must have a high degree of validity and other similar circumstances must not affect the internal confidence of the judge.

During the trial, a certain impression may be formed in court on this or that fact of the case. The lack of pre-determined validity of the evidence for the court means that no piece of evidence will take precedence over the other in the evaluation process until the end of the process, no piece of evidence should be considered the most convincing, every piece of evidence will be valid along with other evidence.

The court evaluates each piece of evidence in terms of relevance, acceptability and reliability, as well as the adequacy and relevance of the set of evidence. This requirement determines the procedure and criteria for evaluating the evidence.

The relevance of the evidence is determined by whether it reflects information about facts or things that confirm, refute, or question a particular circumstance that is relevant to the case. The evidence must be relevant to at least one claim or objection or other fact.

The acceptability of the evidence implies that the requirements of substantive and procedural law have been complied with in obtaining them. On the one hand, the court draws attention to the fact that the rights, freedoms, legitimate interests of citizens, the rights and interests of legal entities are not violated in obtaining evidence, the evidence is obtained from specific sources. On the other hand, courts must make sure that the rules of procedural law are followed in obtaining evidence.

The reliability of the evidence shows their accuracy, their validity. As a rule, the testimony of a witness who is unable to state the source of his or her testimony is not considered evidence. The source of the information given in the testimony of witnesses does not mean that it was preserved by the witness in the same way as it was in this or that case, but it does provide the basis for the formation of this information. If the source (condition) from which the information is obtained is not identified, the legislation does not allow the recognition of such statements as credible evidence.

According to Article 93 of the Criminal Procedure Code of the Republic of Uzbekistan, perishable products and other material evidence must be immediately considered by the court. This requirement is determined by factors such as the loss of access to information relevant to the work with the breach of such facilities, and a decrease in reliability over time as a result of their review. If perishable evidence is presented to the court late or is not immediately reviewed by the court and results in damage to the items, such evidence shall not be recognized as credible because the source of the information to be accepted as evidence is a clear and truthful conclusion on the case. changes have occurred that exclude the issue.

Due to their nature, material evidence has a high degree of reliability: even in complex cases, the samples that make them up are original in terms of serving as evidence and do not exist in duplicates. If the fact of the existence of a single subject is sufficient to confirm a particular case, this evidence is often regarded as credible evidence. If the source of the information provided as evidence is not the subject but certain traces left in it, such as traces of injury, then the source of their origin may not always be clear to the courts.

In assessing the reliability of such material evidence, the court must make sure that the evidence, which serves to determine the circumstances of the case, has not been subjected to any external influence.

The first step in assessing the reliability of a document is to verify compliance with the procedure for its adoption, registration or approval, the conditions and procedure for its preparation and signing. If the written evidence is provided by a public authority, a local public authority, one of the conditions of its reliability is reflected in the existence of the relevant authority to adopt this document.

If there is any doubt about the reliability of the written evidence in the case or it is established that it is falsified, the person who presented this evidence may ask the court to remove this evidence from the list of evidence and consider the case with other evidence. If such evidence is not excluded from the list of evidence, the court must take into account that the person who presented the evidence has doubts, and whether the possible changes have affected the circumstances relevant to the case

According to Article 96 of the Criminal Procedure Code of the Republic of Uzbekistan, if the expert's opinion is unfounded or contradicts other evidence in the case, as well as in other cases where its accuracy is in doubt, the court may order a re-examination by another expert (group of experts). In such cases, the expert opinion may be considered unreliable and if the case cannot be determined without special knowledge in science, art, technology and

[2] Рыжов К. Б. Принцип свободной оценки доказательств и его реализация в гражданском процессе / К. Б. Рыжов. – М.: Инфотропик Медиа, 2012. – 84-85 с.

other fields, the court must order a re-examination, as the court opinion on the relevant case should not be based on unreliable evidence.

Paragraph 17 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 12, 2008 No. 24 "On some issues arising in judicial practice in the appointment, conduct and evaluation of expert opinions in civil cases" defines the issues of re-examination. In our opinion, in examining and evaluating the expert opinion, the court must determine: 1) whether the requirements of the law have been complied with in the appointment and conduct of the forensic examination; 2) whether there are grounds to reject the expert; 3) competence of the expert and not going beyond the scope of expert knowledge on the issues raised; 4) the adequacy of the facilities provided for review; 5) the answers to the questions are sufficient and they correspond to other evidence in the case; 6) mutual agreement of the conclusions of individual experts and the results of general conclusions; 7) the expert's opinion is substantiated and it is consistent with other evidence in the case. These criteria allow the court to conclude that the expert opinion is reliable.

According to GS Baymaganbetova, the sufficiency of evidence is an indicator of quality, not quantity[3]. In addition to this opinion, it should be noted that different evidence may be presented in a case, and the task of the court is to identify and sort out the evidence from which to draw clear conclusions about the circumstances relevant to the case. On this basis, the assessment of the sufficiency of evidence is reflected in the identification of acceptable, credible and relevant evidence that allows a complete and accurate conclusion as to the existence or non-existence of facts relevant to the subject matter of the case.

When considering the interrelationship of a set of evidence, the court is required to examine their relationship to other evidence, confirming, questioning, or refuting each other.

The results of the evaluation of the evidence shall be reflected in the court's decision, which shall specify the grounds for accepting or rejecting the evidence. The court's decision must indicate not only the evidence that is the basis for the case, but also the reasons for the court's rejection of evidence that is not relevant to the case, unfavorable or not accepted on other grounds.

Analysis of the procedural form of evidence evaluation allows us to conclude, first of all, that it is a human-specific thinking activity. The judge evaluates each piece of evidence separately, and the set of evidence in relation using the methods of law-based logic, analysis and synthesis.

However, the assessment of the evidence is not carried out arbitrarily on the basis of the criteria chosen by the judge himself, but in the procedural order established by law. Evidence evaluation therefore consists of a set of procedural actions that take place simultaneously with the evidence process on the case and the reasoning process aimed at developing a unified conclusion on the individual evidence. In this way, the first sign of evidence evaluation is manifested in the unity of thought and procedural action.

Evaluation of evidence is carried out by the court after consideration of the content of the case. However, from the beginning of the proceedings until the court enters a separate room (counsel) for a decision, the parties to the case may analyze the evidence in the case, evaluate them on the basis of their position, express their views with arguments in the proceedings. After receiving the statement of claim and the documents attached to it, the defendant may submit an application to the court to take measures to provide the evidence necessary to substantiate his objections.

The above actions are in a sense based on evidence evaluation, in which case a number of scholars suggest that there is an evaluation of the evidence by those involved (such an assessment is recommended) and by legal aid providers (such an assessment is ancillary)[4]. However, the court may or may not take into account the results of the assessments made by these entities; the results of the assessment carried out by the persons involved in the case are not binding and do not have the legal force provided by the state. In this regard, the opinion of the parties not to recognize the possibility of assessing the evidence formed by the legal position reflected in their statement of claim, objection to it, explanations in court on the subject of evidence in the proceedings is more correct[5]. The term "evidence evaluation" can be used conditionally in relation to the persons involved in the case in terms of the performance of mental, analytical, comparative operations in the process of proof in court, but such reasoning process is not recognized as evidence evaluation.

The theory of evidence evaluation reflects the following aspects: a) normative-evaluative, general and compulsory in nature; b) having legal force is equal to the legal force of the rule of law; c) although not a legal norm, it has a normative force in its essence[6]. These indications are specific to a court decision that has entered into force and reflect the results of the evaluation of the evidence. A court decision that has entered into force has the characteristics of a normative legal act and is binding on all state bodies, local state authorities, enterprises,

[3] Баймаганбетова Г. С. Оценка доказательств в гражданском процессе // Право и государство. – 2011. – № 2 (51). – С. 84-88.

[4] Зеленяк Е. С. Владна, рекомендаційна та допоміжна оцінка доказів у цивільному процесі / Е. С. Зеленяк // Адвокат. – 2013. – № 1. – С. 41-44.

[5] Рыжов К. Б. Принцип свободной оценки доказательств и его реализация в гражданском процессе / К. Б. Рыжов. – М.: Инфотропик Медиа, 2012. – 10 с.

[6] Новиченко А. А. Юридическая оценка и особенности ее проявления в различных сферах правовой деятельности: автореф. дис. … канд. юрид. наук. – М., 2006. – 9 с.

institutions, organizations, officials and citizens, and must be enforced throughout the country, and in some cases outside it (Part 1 of Article 16 of the CPC).

The facts and circumstances established by a court decision that has entered into force shall be binding on the persons involved in it and other persons in respect of whom these circumstances have been established, and may not be disputed by third parties and their legal successors. . The court is the only subject whose assessment has the above consequences, and is the second distinctive feature of the assessment of this evidence.

The purpose of evidence evaluation is to determine the relevance, acceptability, and reliability of each piece of evidence for the case, the adequacy of the evidence set, and their interrelationships. The results of the evaluation of the evidence allow a sufficient determination of the circumstances of the case.

Based on the above, the assessment of evidence allows the court to conclude that the evidence provided for in the procedural law is sufficient and is a mental-procedural activity aimed at determining the relevance, reliability, acceptability, relevance to the case.

Legislative regulation of the procedural form of evidence evaluation does not limit the freedom of the courts to conduct an assessment, but rather provides a certain structure by regulating this activity. Evaluation of evidence should not be outside the scope of the law, and third party interference in the process should be prevented. No entity, including higher courts, should be able to give guidance or advice in evaluating evidence in a particular case. No evidence should have superior and predetermined legal force for the court. The court, in accordance with the law, evaluates the evidence on the basis of its internal confidence and must be free from any external influence.