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The importance of taking evidence as part of the court proceedings

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Abstract

This paper delves into the critical role of evidence collection within the civil judicial process, underlining its significance as a fundamental cognitive task through which courts establish the factual and legal foundations of disputes. By dissecting the civil process's aim and purpose, the study emphasizes the necessity of gathering evidence as a cornerstone for rendering just and equitable decisions. It explores the intricate balance courts must maintain in exercising judicial discretion and strategy, focusing on the adjudication process's nuanced requirements for determining the relevance and admissibility of evidence. The distinction between contentious and non-contentious proceedings is examined to underscore the dynamic procedural responsibilities that parties face in proposing evidence, alongside the court's authority to direct further evidence collection. This analysis extends to the constitutional and procedural underpinnings that frame the principles of free evidence evaluation against the backdrop of ensuring a fair trial, highlighting the judiciary's critical role in upholding justice while navigating factual intricacies. Further, the paper investigates the ramifications of recent legal reforms in Slovakia for evidence collection practices, illustrating how procedural law modifications are geared towards augmenting the civil process's efficiency and fairness by recalibrating the judiciary and participatory roles. Additionally, the evolving jurisprudence on evidence is scrutinized, elucidating the paramount influence of supreme judicial decisions in setting guiding precedents for lower courts. These precedents, in turn, inform approaches to evidence collection, significantly impacting the landscape of civil litigation in Slovak Republic. Through this comprehensive exploration, the paper seeks to illuminate the essential functions and evolving dynamics of evidence collection in the civil judicial system, thereby contributing to a deeper understanding of its pivotal role in achieving judicial fairness and correctness.

Keywords: evidence, facts, parties to the dispute, court decision

1. Introduction

The purpose of the civil process is to protect the violated or threatened subjective rights and the right-protected interests of natural and legal persons. According to the Constitution of the Slovak Republic, everyone has the right to seek judicial protection in an impartial and independent court, and according to Art. 6 par. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms, everyone has the right to have their matter discussed fairly, publicly and within a reasonable period of time by an impartial and independent court, established by law (due process), which will decide on his civil rights or obligations. The Constitutional Court of the Slovak Republic has already judged the agreement of the intentions in the sphere of the right to judicial protection with the legal regime of judicial protection according to the Convention (II. ÚS 71/97). For this reason, therefore, a fundamental difference cannot be seen in the content of these rights. Constitutional Court of the Slovak Republic, I. ÚS 64/97: The Constitutional Court of the Slovak Republic is entitled to review also the proceedings and decisions of general courts, which would lead to a violation of the fundamental rights forming

the content of the constitutional institute of judicial protection (chapter two, section seven of the Constitution of the Slovak Republic). The content of the fundamental right to comment on all the evidence presented by the party before the general court does not include the obligation of the court to take all the proposed evidence because the principle of free evaluation of evidence in the proceedings before the courts, in conjunction with the principle of fair decision of the case, allows the judge and the court to perform only the evidence which, according to his discretion, leads to such a decision. Constitutional Court of the Czech Republic, I. ÚS 593/04: However, its jurisprudence also emphasizes another dimension of the constitutional right to a fair trial. He reminds us that the courts are obliged, according to the provisions of § 132 of the Code of Civil Procedure (author's note - § 191 CSP), to deal with everything that came to light during the proceedings and what the parties to the proceedings claim, if it is related to the case under discussion. If the courts do not comply with this legal obligation, either by not dealing with the established facts or asserted objections at all or by insufficiently dealing with them, this results in a procedural defect, reflected as an interference with the constitutionally guaranteed right to a fair trial according to Art. . 6 par. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms and the right to judicial protection under Art. 90 of the Constitution of the Czech Republic and Art. 36 par. 1 Document (cf. finding in case no. IV. ÚS 563/03, Collection of findings and resolutions of the Constitutional Court, volume 33, finding no. 71). In this way, the basic function of evidentiary proceedings in the civil court process is respected, which includes the presentation of evidence, its evaluation and leads to the establishment of the state of facts. It should be added that the above conclusions are typically applied in contested proceedings; in uncontested proceedings governed by the investigative principle, it is necessary to evaluate the fulfilment of these postulates even more strictly. The legislator expressed this approach in § 120 par. 2 of the Code of Civil Procedure (author's note - now § 36 CMP), according to which the court is obliged to provide other evidence needed to establish the facts than the participants suggested. It is not about the court's obligation to search for evidence, but it means that failure to fulfil the obligation of assertion and proof cannot be detrimental to the participant. For the reasons stated, the Constitutional Court states that such a fundamental violation of the investigative principle in uncontested proceedings can violate constitutional law principles and fair process, especially **[1]**.

The basic legislation valid in the Slovak Republic in this field is represented by: Law no. 160/2015 Coll. of Slovak Republic. Civil dispute procedure. Law no. 161/2015 Coll. Of Slovak Republic: Civil non-dispute order. Law no. 162/2015 Coll. Of Slovak Republic: Correct court order. Law no. 99/1963 Coll. of Slovak Republic: Civil Code of Court, as amended. Law no. 460/1992 Coll. Of Slovak Republic: The Constitution of the Slovak Republic as amended by later constitutional laws.

Case laws, relevant in this problematic in the Slovak republic are: R 49/1982, Constitutional Court of the Slovak Republic; 1. ÚS 64/97, Constitutional Court of the Slovak Republic; IV. ÚS 35/2012, Supreme Court of the Slovak Republic; sp . stamp 4 Cdo Z62/2009, Supreme Court of the Slovak Republic; sp . stamp 4 Cdo 13/2009, Constitutional Court of the Slovak Republic; III. ÚS 21/2015, Supreme Court of the Slovak Republic; sp . stamp 6 Cdo 81/2010, Supreme Court of the Slovak Republic; sp . stamp 6 Cdo 259/2010, Constitutional Court of the Slovak Republic; I. ÚS 52/03, Constitutional Court of the Slovak Republic; III. 332/09, Constitutional Court of the Slovak Republic; II. ÚS 1774/14, Constitutional Court of the Czech Republic; II. ÚS 296/01, R 49/1982; Constitutional Court of the Slovak Republic, II. ÚS 38/2015; The Supreme Court of the Slovak Republic, sp . stamp 7 Cdo 214/2014; Constitutional Court of the Slovak Republic, I. ÚS 564/2012; Constitutional Court of the Slovak Republic, II. ÚS 38/2015.

The theoretical and practical aspects of law have been extensively explored through the collaborative efforts of several authors, including Drgonec **[2]**., Kerecman et al. **[3]**, Macur **[4], [5]**, Smyčková **[6]**, Števček **[7]**, **[8]**, and Ševcová **[9]** across various publications on constitutional, civil, and procedural law.

2 The regulation and role of evidence in judicial protection of subjective rights and interests

The legal protection of subjective rights and interests in the judicial process aims to protect real, existing rights as close as possible to their substantive expression. Substantive law regulates which facts are necessary for subjective law to arise, change, and disappear **[10]**.

The court must first answer the question of which facts are decisive for deciding the parties' final proposals. It must then assess which facts are in dispute and decide which are true. Procedural evidence is used to evaluate these facts and decide the dispute.

In addition to substantive legal regulation, the method of proof is also significantly influenced by the legal regulation of proof. Evidence is currently differentiated according to the type of proceedings, for which a different course is typical: evidence in basic dispute proceedings, evidence in disputes with the protection of the weaker party, evidence in out-of-contention proceedings, and evidence in administrative courts.

The main difference in these types of proceedings lies in the parties' different degrees of procedural responsibility for proposing evidence and the possibility of the court's interference. While in the basic dispute proceedings, the court does not have the chance to act *ex offo* and take evidence that the parties did not propose (except the adjustment according to § 185 paragraphs 2 and 3 of the CSP), in disputes with the protection of the weaker party, it can take evidence that the party did not propose, if it is necessary for the decision in the matter. In out-of-court proceedings, the court is also obliged to take other evidence if necessary to establish the true state of the matter (§ 36 CMP). The particularities of evidence in administrative justice have their justification in the mission of the administrative court, which is not a court of fact. Still, it is a court that primarily assesses the legal issues of the contested decision or measure of the public administration body and performs evidence only exceptionally since administrative justice is predominantly based on investigation of the legality of the already identified factual and legal situation (the above was also stated by the Constitutional Court, e.g. in the decision file no . II. ÚS 379/09). The Administrative Court is based on the facts established by the public administration body unless the Administrative Court Rules stipulate otherwise. The administrative court can take the evidence necessary to review the legality of the contested decision, measure, or decide on the matter. It follows from the above that the Administrative Court Rules legitimize the administrative court to, in each individual case, conduct the evidence necessary to review the legality of the challenged decision or measure or to make a decision on the matter. However, this is a possibility, not an obligation of the administrative court.

The administrative court procedure also allows for exceptions when the established facts do not bind the administrative court and can carry out the evidence itself. In principle, however, it should be true that the administrative court should not replace the evidence that the public administration body should carry out as a priority. In other words, if the ascertainment of the facts is insufficient for a proper assessment of the matter, in such a case, it is a reason for annulment of the contested decision or measure of the public administration body [§ 191 par. 1 letter e) SSP], and not to supplement the evidence by the administrative court.

3 Principles and prerequisites for judicial decision-making in civil dispute proceedings

The prerequisites for the fulfilment of the purpose of the civil process in general (regardless of the differentiation of the civil process) are, on the one hand, the discussion of the matter itself before the court, in principle, at a public hearing, in which the basic principles that are typical of the mature democratic legal principles of the civil process are reflected and also resonate in the jurisprudence of national and transnational judicial authorities. They are mainly the principle of the public in the sense of the guarantee of the right to judicial and other legal protection, the principle of orality and directness in the sense of the attributes of a fair process (that is, being present at the discussion of the case, the right to comment on the evidence presented), and the principle of the dignified course of justice (as an important principle of judicial performance).

Another prerequisite is the issuance of an authoritative court decision. A correct, legal and fair decision is an important part of the right to a fair trial **[11]**.

As such, it is reviewable by the Supreme Court of the Slovak Republic, which, by its authority, expressed in Article 124 of the Constitution of the Slovak Republic, is an independent judicial body of constitutionality, which enables it to review contested decisions of general courts, but only from the point of view of whether or not it is by constitutional procedural principles regulated in the Constitution of the Slovak Republic (subsidiary authority of the ÚS SR).

The civil dispute process represents a complex of civil procedural relations that aim to achieve petitionary protection of a violated or endangered subjective right. As part of this process, the court must evaluate the factual and legal basis of the decision in close consultation with the parties.

The legal basis of the decision (*questio iuris*) is exclusively the court's responsibility and is implemented by applying and interpreting the substantive legal norm to a specific factual situation. In other words, the court must subsume the concretely established state of facts under the hypothesis of a legal norm and deduce from the general rule of conduct (disposition) what is considered the law in the given case.

In some cases, the distinction between factual and legal knowledge can be problematic. Specifically, it refers to abstract concepts that are relevant to the court's decision (e.g. causation, fault, mistake, good faith, etc.), which are sometimes referred to as mixed knowledge since, depending on the circumstances, they are sometimes considered a question of fact and other times legal question. To clarify whether it is a factual or a legal finding, the court must specify which of its conclusions are the result of evidence and which are the result of legal qualification.

A necessary prerequisite for the court's application and interpretation of the law is ascertaining the facts (*questio facts*). During this time, factual knowledge is obtained, and the claim under discussion is established and justified. The court obtains basic information about the factual situation based on the means of procedural attack

and procedural defence, which include factual assertions, denial of factual assertions of the opposing party, motions to take evidence, objections to motions of the opposing party to take evidence, and substantive objections (§ 149 CSP).

The determination of the facts by the court is generally conditioned by general knowledge about the recognition of procedurally relevant facts and the legal regulation of evidence. They determine how the court becomes familiar with the procedurally significant fact that results from it and whether and how concrete evidence is taken. The individual provisions of the CSP result in the following methods of ascertaining the facts in dispute proceedings: a) evidence, b) taking into account notoriety and facts known to the court from its activities, c) taking into account the decisions of other bodies by which the court is bound, d) consideration of facts belonging to powers of a non-judicial body, e) adoption of the parties' concurring claims, f) findings of fact resulting from non-denial of factual claims, g) negative creation of factual findings of the court, h) factual basis in summary proceedings and summary decisions. The court must base its decision on a situation that corresponds to a) the proven claims of the parties to the proceedings, b) facts that were not in dispute between the parties and the court has no reasonable doubts about their truth, c) facts that are not necessary to prove (§ 121 O. sp.) and facts resulting from legal or factual assumptions and d) legal fictions. If the plaintiff wants to be successful in the proceedings, he must state the facts justifying his claimed claim in the action, and he is obliged to submit full evidence of these facts **[12]**.

4 Evidentiary dynamics and the burden of proof in civil litigation procedures

Since evidence is related to the factual basis of the dispute, which forms the basis for the court's merits decision, it is considered the most important part of the civil process. The court ascertains this background through a procedural procedure in the process of proof with particularities in contentious and non-contentious proceedings resulting from applying various principles. In dispute proceedings, emphasis is placed on the full implementation of the dispositional principle, which is manifested mainly in the fact that the court, in principle, only conducts evidence that the litigants propose to it, and only in exceptional cases can it also conduct such evidence that none of the disputing parties has proposed to it. In particular, this question is adjusted for the purposes of disputes with the protection of the weaker party, in which the court can take evidence even without a proposal if it is necessary for the decision on the matter (§ 295, 311 and 319 CSP). The Supreme Court of the Slovak Republic, no. stamp 4 Cdo 13/2009 **[12]**: The initiative in gathering evidence rests fundamentally with the parties to the proceedings. The participant who did not indicate the evidence necessary to prove his claims bears adverse consequences in such a court decision based on the facts established based on the evidence presented. The same consequences apply to the participant who, although he proposed evidence of the truth of his claims, evaluating the evidence presented by the court resulted in the conclusion that the evidence did not confirm the truth of the participant's factual claims. The law determines the burden of proof as the procedural responsibility of the participant for the outcome of the proceedings, as long as the result of the evidence performed determines it. The consequence of the fact that the claim of the participant is not proven (in the sense that the court does not consider it to be true), either based on the proposed evidence or based on the evidence that the court conducted without the proposal, is an unfavourable decision for the participant **[13]**.

Evidence in litigation is entrusted to the procedural sphere of the disputing parties. In this context, it is particularly necessary to emphasize that the process of evidence is directly related to the concentration of legal and judicial litigation. The decision as to which of the proposed evidence will be taken in the proceedings is, therefore, the court's exclusive jurisdiction. Still, at the same time § 22 par. 2 CSP specifies the court's obligation to specify in the justification of the written version of the decision which facts it considers proven and which not, which evidence it conducted, which evidence it relied on, how it evaluated it and why it did not conduct additional suggested evidence. Proper justification of a court decision is part of the right to a fair trial **[14]**.

In this context, the Constitutional Court of the Slovak Republic already has a consistent jurisprudence, which mainly concerns the arbitrariness of the decision (arbitrariness in the decision of the judge). In other words, this means that the court does not have to take all the proposed evidence, but it is absolutely necessary to deal with it in the reasons for the decision on the merits. If the participant proposes evidence to the court, he must indicate which facts are to be proved by this evidence. The court will not take evidence irrelevant for the case assessment and cannot lead to the discovery of the facts foreseen by the factual basis of the legal norm that must be applied to the case in question. The court is not bound by the proposals of the participants to take evidence and is not obliged to take all the proposed evidence. The assessment of the proposal for the execution of evidence and the decision which will be carried out as part of the evidence is always a matter for the court rather than for the parties to the proceedings.

Constitutional Court of the Slovak Republic, I. ÚS 64/1997: The content of the basic right to comment on all evidence presented by a party to the proceedings before the general court does not include the obligation of the court to produce all proposed evidence, because the principle of free evaluation of evidence in proceedings before

courts in conjunction with the principle of a fair decision of the case, it allows the judge and the court to take only those evidence which, according to his discretion, lead to such a decision **[15]**.

Also, the stage of evidence evaluation itself is entrusted exclusively to the court's jurisdiction; the principle of free evaluation of evidence applies, which means that no evidence has prescribed legal force, all evidence is equal, and there is no weight of evidence. The content of the basic right to comment on all evidence presented by a party to the proceedings before the general court does not include the obligation of the court to produce all proposed proof because the principle of free evaluation of evidence in proceedings before courts in conjunction with the principle of a fair decision of the case, it allows the judge and the court to take only those pieces of evidence which, according to his discretion, lead to such a decision **[16]**.

Out-of-court proceedings are governed by the principle of material truth and the principle of investigation, which lead to the fact that the evidentiary initiative is accumulated primarily in the court, whose duty is to find out the relevant facts in active cooperation with the participants in the proceedings. The General Court is obliged and authorized in non-contentious (author's note – now non-contentious) proceedings to take evidence not only within the scope of its legal competence but also within the scope of constitutional responsibility for ascertaining the state of facts, which cannot depend on the will of the parties to the proceedings **[17]**.

The investigative principle is manifested in the provisions of § 36 of the CMP, following which the court is obliged to take evidence other than that proposed by the participants. The ascertainment of the actual situation depends to a large extent on the implementation of the obligation of assertion and the obligation of proof, which are common basic procedural obligations in both contentious and non-contentious proceedings. In contrast, the difference between contentious and non-contentious proceedings lies in the objective procedural responsibility in the event of their non-fulfilment.

5 The cognitive process of evidence and procedural obligations in civil proceedings

Evidence is a specific cognitive process in which the court establishes the factual basis of the dispute. In contrast, in the civil process the subject of knowledge is defined by the purpose and goal pursued by this process. The theory of procedural law defines procedural evidence as a procedure governed by objective law by the court, the parties and other subjects of the proceedings. The aim is to obtain factual and legal knowledge important for the procedural procedure or the decision. Procedural evidence verifies the factual claims of the parties based on proposed evidence, as a result of which the factual state of the matter necessary for a decision is ascertained. At the same time, this knowledge is obtained directly or indirectly.

As mentioned above, evidence is entrusted in dispute proceedings to the disputing parties' sphere of activity and is carried out at the hearing. The initiative to collect evidence in dispute proceedings lies essentially with the parties. The obligation to fully and truthfully describe the decisive facts (obligation to assert, substantiate, the obligation to present relevant factual statements) and the obligation to indicate evidence in support of one's assertions (obligation of proof) are basic procedural obligations that are common to both contentious and non-contentious proceedings. Whether a party to the proceedings appears on the side of the plaintiff or the defendant does not directly impact his obligation to assert decisive facts and present or mark evidence for his assertions. The distribution of the burden of assertion and the burden of proof between the participants in the dispute depends on how the legal norm defines the rights and obligations of the participants. It is usually the case that the plaintiff must assert the facts giving rise to the defendant's right, while the circumstances excluding this right are a matter for the defendant. The burden of assertion and proof describes the proceedings' factual and evidential situation. It can change during the course of the dispute so that it can be redistributed.

The Supreme Court of the Slovak Republic, no. stamp 4 Cdo 262/2009 **[19]**: By marking the evidence to prove their claims, the participants fulfil the burden of proof. If the participant proposes evidence to the court, he must state which facts will be proven by this evidence. Otherwise, he is exposed to the possibility that the court will not perform the evidence if the purpose of the proposed evidence is unclear. However, the court is not bound by the participants' proposals for taking evidence and is not obliged to take all the proposed evidence **[19]**.

The party that did not indicate the evidence necessary to prove its claims bears adverse consequences in such a court decision based on the factual situation established based on the evidence provided. The same consequences apply to the party that has proposed evidence of the truth of its claims. Still, the evaluation of the evidence presented by the court resulted in the conclusion that the evidence did not confirm the truth of these factual claims. The law determines the burden of proof as the procedural responsibility of the party to the dispute for the outcome of the proceedings, as long as the result of the evidence performed determines it. The consequence of the fact that the claim of the party to the dispute is not proven (in the sense that the court does not consider it to be confirmed), neither based on the proposed evidence nor based on the evidence that the court conducted without a proposal, is an unfavourable decision, or loss of contention.

For the participant to fulfil his legal obligation to mark the necessary evidence, he must first fulfil his obligation to assert. Therefore, the assertion of the facts by the participant is the prerequisite for the obligation of proof, the so-called burden of proof **[3]**.

There is a close relationship between the duty of assertion and proof. If the participant does not fulfil his obligation to assert decisive facts from the point of view of the hypothesis of the legal norm, then, as a rule, he cannot even fulfil the obligation of proof. Failure to fulfil the obligation to assert, i.e. failure to bear the burden of assertion, results in the fact that the participant did not assert at all and which did not otherwise come to light in the proceedings, as a rule, will not be subject to proof. If it is a fact decisive according to substantive law, then failure to bear the burden of asserting this fact will usually result in an unfavourable decision for the participant. The law obliges participants to state all necessary facts; the necessity, i.e. the range of decisive facts, is determined by the hypothesis of the substantive legal norm, which regulates the disputed legal relationship of the participants. This standard fundamentally determines, on the one hand, the scope of the burden of proof, i.e. the range of facts that must be conclusively proven, and on the other hand, the bearer of the burden of proof. The burden of assertion and proof describes the proceedings' factual and evidential situation. It can change during the course of the dispute so that it can be redistributed. When assessing the burden of proof on the participant's part, the so-called negative proof theory, i.e. the rule that the non-existence (of something) having a lasting character is fundamentally not proven. The assessment of the burden of proof is part of the ascertainment of the facts and the evaluation of evidence (see II. ÚS 400/09). Still, it also includes the application and interpretation of the hypothesis of the substantive legal norm, from which the distribution of the burden of proof depends. The correct distribution of the burden of proof leads to the definition of the ascertained facts and is a necessary prerequisite for the correct application of the responsibility of the participant for failure to bear the burden of proof, and thus directly also to the content of the statement of the decision in the main matter. Incorrect distribution of the burden of proof usually leads to a diametrically different statement of the decision. Under certain circumstances, this procedural error in its effects may be a manifestation of arbitrariness, i.e. arbitrariness on the part of the acting court, which, e.g. disproportionately burdens one participant with the burden of proof, incorrectly applies his responsibility for not carrying the burden of proof, and subsequently decides against this participant **[20]**.

In the proceedings, it is necessary to prove the disputed facts between the parties, which the court considers relevant to the case's decision. During the case's preliminary hearing, the court will notify the parties of the preliminary legal qualification, which facts it considers to be disputed and which evidence it will present. Here, we are talking about intentionality - the focus of procedural evidence on disputed facts, which the court defines as the relevant factual basis of evidence.

The basis for discussing the matter in dispute proceedings (if no exceptions are provided for by law) are the claims made by the parties to the dispute. For this purpose, the theory of civil process is based on the fulfilment of procedural obligations by the parties. The court is not authorized (nor obliged) to examine whether the parties' claims are true and complete but decides based on what has come to light. Therefore, the court does not examine the material truth (that is, what corresponds to reality) but only the formal truth (the findings of fact that came to light through a procedure established by law). This means that the court will decide based on a range of facts found in the proceedings when the decision is made. The modern civil process (apart from statutory exceptions) has abandoned the thesis that the court must ascertain the facts reliably. On the contrary, he prefers a modified negotiation principle based on the discovery of the truth only according to the parties' claims, combined with the possibility of material management of the dispute in the social concept of the civil process. From the point of view of success in the dispute, it is important that of the objectively relevant facts in favour of the party to the dispute, this party was able to prove to the court before deciding on the matter. The negotiation principle is modified to shift the responsibility for conducting the dispute (procedural diligence) to the parties to the dispute. If a party to a dispute fails to meet any procedural burden, it loses the dispute. The goal of the material management of the dispute is to obtain the most complete and reliable basis for the correct decision on the matter so that a reliable and complete basis for the decision is obtained. Still, at the same time, it does not lead to the discussion of secondary, unimportant circumstances. During the material management of the dispute, the court is authorized to act beyond the scope of the originally presented factual statements. Therefore, the law allows the court to streamline the evidence and to secure such assertions and evidence that the parties in the dispute did not initially submit.

6 The recodification of civil procedure and its impact on the evidence process

The civil dispute process represents a complex of civil procedural relations, which aims to achieve petitionary protection of a violated or endangered subjective right. As part of this process, the court must evaluate the factual and legal basis of the decision in close connection with the parties. Procedural evidence is a procedure of the court and the parties regulated by objective law, which aims to obtain factual and legal knowledge important for the

procedural procedure or the decision in the matter. Procedural evidence verifies the factual claims of the parties based on proposed evidence, as a result of which the factual state of the matter necessary for a decision is ascertained **[10]**.

In the content of the submitted article, we tried to point out the importance of evidence in a civil trial, based on the well-known fact that the establishment of the facts is the centre of gravity of the civil trial since the summary of factual findings reached by the court in the course of the proceedings is the factual basis of the court decision. Although the court can obtain factual information in several ways, it primarily obtains it during the course of evidence, making it the most important phase of the civil process, which we tried to point out as part of emphasizing the importance of evidence in court proceedings.

It can be concluded that in recent decades, the science of civil procedure has focused more on the analytical examination of individual legal provisions than on comprehensive doctrinal works, which resulted in the recodification of civil procedural law in the Slovak Republic, and especially its results in the form of newly adopted procedural regulations. Years later, it is already possible to assess the real benefit of the re-codification of civil law and the fulfilment of its goals. In connection with the legal regulation of evidence, it can be said that compared to the original regulation of evidence in the OSP, the legal regulation contained in the new procedural regulations improved (modernized) the legal regulation of evidence, especially in the sense of deepening the principle of adversarial and increasing the procedural responsibility of litigants parties for their own activity (failure to bear the burden of assertion and the burden of proof as their basic procedural obligations, in the form of losing the dispute). The characteristic of today's legal regulation of evidence in dispute proceedings is that the dispute is governed by the principle of adversarial, concentration, negotiation principle and the principle of formal truth **[13]**.

The new codification of the civil process in the Slovak Republic is based on the so-called " Klein's " social concept of the civil process, the typical feature of which is, on the one hand, the strengthening of the role of the judge, the limitation of the control of the parties over the factual situation and the so-called material management of the dispute, which means that a "strong" judge does not have to accept the claims of the parties passively (this is a modification of the negotiation principle) and the judge evaluates the non-fulfilment of the procedural obligations of the parties during the evaluation of the evidence, while the procedural sanction may be the loss of the dispute **[21]**.

The recodified civil process is based on the so-called strong judge. According to the Code of Civil Procedure, the judge should at least intervene in the process of evidence. On the contrary, evidence is mainly entrusted to the procedural sphere of the disputing parties, which does not mean that the judge must only be a passive recipient of statements. On the contrary, it conducts the dispute materially, still under significant and relatively strict requirements for the activity of the disputing parties for the outcome of the dispute. According to Klein's social concept, the goal of court proceedings is to achieve the result of the court proceedings as quickly as possible (the court represents society's interest in resolving the conflict. Therefore, it is also the responsibility of the state to act as judge to achieve the result as quickly as possible) and to ensure that the outcome of the court proceedings is as the fairest. Proof plays an important role in fulfilling the mentioned goal **[21]**.

Overall, the recodification of civil procedural law modernized the evidence process compared to the original legislation.

The constant jurisprudence of the highest judicial authorities of the Slovak Republic plays an important role in the process of proof in matters of proof in the sense of stating the individual principles to which the jurisprudence in question is bound (the principle of legal certainty, the principle of equality, the principle of legality of evidence, the principle of legality and the principle of adversariality). National jurisprudence is primarily focused on court decisions regarding basic procedural obligations, especially the burden of proof, further jurisprudence relating to methods of taking evidence and jurisprudence relating to evaluating evidence. It is necessary to emphasize the necessity of its knowledge in the sense of ensuring a fair trial and, in this context, to highlight the new legal regulation regarding the obligation to thoroughly justify the deviation from the established decision-making practice in the process of deciding the case, in the justification of the written version of the judgment.

In addition to the aforementioned jurisprudence, it is also necessary to refer to the constant jurisprudence of the Constitutional Court of the Slovak Republic and the European Court of Human Rights to point out specific decisions in cases where the complainant claims a violation of his (or objects to a violation of his) fundamental right to "judicial protection" ", guaranteed by the Constitution of the Slovak Republic, and the right to a fair trial according to Art. 6 par. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms. The right to a fair trial is integral to fundamental rights guaranteed in Art. 46 par. 1 of the Constitution of the Slovak Republic and in Article 6 par. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms. Based on this, in connection with the evidence, we consider it necessary to point out the proceedings on complaints

before the Constitutional Court of the Slovak Republic, based on the subsidiary authority of the Constitutional Court in providing the protection of fundamental rights, which excludes duplication in decision-making in the provision of protection of fundamental rights and freedoms.

It follows from the European Court of Human Rights jurisprudence that the complainants complain most often about violating the right to a fair trial following Art. 6 par. 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms in the sense of violation of their right to access to court, violation of the right to hear the case in a reasonable time (unreasonable length of court proceedings), violation of the right to hear the matter by an impartial court, violation of the right to public and oral hearing of the matter in front of the court, violation of the right to adversarial proceedings, non-respect of the principle of "equality of arms", not properly ascertained factual situation and insufficiently justified court decision. These are the most typical cases in which the applicant complains about violating the right to a fair trial at the transnational level at the European Court of Human Rights in Strasbourg.

In exploring the principle of proportionality within the jurisprudence of the European Court of Human Rights (ECtHR), it becomes evident that the court undertakes a meticulous examination of the restrictions placed on fundamental rights and freedoms, particularly those guaranteed by Articles 8 through 11 of the ECHR. The ECtHR requires that any interference must not only be established by law but also necessary, suitable, and minimally invasive, ensuring that the essence of the right is not compromised and a fair balance is struck between public and private interests. This adherence to proportionality, underpinned by the doctrine of the margin of appreciation, showcases the court's commitment to maintaining a delicate balance between the necessity of restrictions and the preservation of fundamental rights, thus significantly influencing the case law of the ECtHR and emphasizing the principle of effective protection **[22]**.

In civil litigation, the process of evidence collection is paramount, serving as a cornerstone for ensuring justice and the efficiency of legal proceedings. The modern legal landscape across various jurisdictions is witnessing significant reforms aimed at refining this critical aspect, addressing challenges such as slow litigation processes and difficult access to crucial information. These reforms are geared towards achieving a balance that enhances the accuracy of fact-finding while ensuring the swift, cost-effective resolution of disputes, a necessity underscored by the rising demands on national civil justice systems and the imperative of upholding the right to a trial within a reasonable timeframe.

7 Conclusion

The legal regulations of the European Union, hygiene manuals, ISO standards, and Codex Alimentarius standards create a framework that regulates the production of milk and dairy products, payment systems for primary producers, contains rules for their safety, and quality, labelling, control, and consumer health protection. These rules apply at all stages of the food chain, in primary production, production, and various sale forms, including import and export. The main objectives of the legislation include consumer protection, consumer information, free movement of milk and dairy products within the EU, regulation of imports and exports of these products, and establishing a quality system for specific products such as protected label products or organic food.

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