SUBJECTS OF EVIDENCE IN THE JUDICIAL PROCESS: COMPARATIVE ANALYSIS AND PHILOSOPHICAL

N.K. SHAPTALA,
Doctor of Law, Judge of
the Constitutional Court
of Ukraine (Kiev, Ukraine)[1]

The article is devoted to the study of evidence and proof in the constitutional litigation. The author conducts a comparative study of foreign and domestic legislation, which regulates the procedure for the adoption, evaluation and use of evidence in legal proceedings of various types of procedural law and, based on its results, offers its original approach to understanding the philosophical and legal meaning of the problem under study.

Key words: proof, evidence, legislation constitutionality, subject of proof, subject of evidence, litigation.

In the legal literature, the problems as associated with the function in goof the institutions of constitutional judicial control, were in vest gated by many domestic scientists, in particular: O.B. Bandura, Yu.V. Baulin, V.F. Boyko, V.D. Bryntsev, Yu.M. Groshevy, N.L. Drozdovych, A.Ya. Dubinsky, V.M. Kampo, N.I.

Shaptala Natalia Konstantinovna – Judge of the Constitutional Court of Ukraine. She was born on April 18, 1959 in Donetsk. Labor activity began in 1976 at various enterprises in Donetsk. After graduating from the law faculty of the Altai State University in 1987, she worked as an intern trainee in the prosecutor's office, an assistant to the prosecutor of the Leninsky district of Donetsk, an instructor of the Leninsky district party committee, an assistant to the prosecutor of Donetsk, a senior assistant to the prosecutor of the Donetsk region. From 1996 to 2006 – a judge of the Leninsky District Court of Donetsk, a judge of the Court of Appeal of Donetsk region. During 2006-2010 – the judge, the first deputy chairperson of the Donetsk Administrative Court of Appeal, and since September 2010 – the judge of the Constitutional Court of Ukraine. Specialist in the field of administrative, criminal and tax law, has a number of scientific publications on these issues. Co-author of the textbook «Constitutional Law of Ukraine», scientific and practical comments to the Budget and Tax Codes of Ukraine. Candidate of Juridical Sciences.

Шаптала Наталья Константиновна – Украина Конституциялық Сотының судьясы. 1959 жылы 18 сәуірде Донецк қаласында дүниеге келген. Еңбек қызметі 1976 жылы Донецктегі түрлі кәсіпорындарда басталды. 1987 жылы бітіргеннен кейін, Алтай мемлекеттік университетінің заң факультеті, прокуратурада стажер ретінде Донецк, Ленин аудандық партия комитетінің, Донецк, Донецк облысында аға прокурорының көмекшісі қаласының прокурорының орынбасары нұсқаушысы Ленин ауданының прокурорының көмекшісі болып жұмыс істеді. 1996 жылдан 2006 жылға дейін – Судья Донецк облысының Апелляциялық сот Донецк судьясы Ленин аудандық сотының. 2006 жылы – 2010 жыл – судья, Апелляциялық Донецк әкімшілік сотының төрағасының бірінші орынбасары, 2010 жылдың қыркүйек айынан – Украина Конституциялық сотының судьясы. Әкімшілік, қылмыстық және салық құқық саласының маманы, осы мәселелер бойынша ғылыми еңбектер бар. оқулығының «Украина Конституциялық заңы» бірлескен авторы, бюджет және Украина Салық кодексіне ғылыми-практикалық

Klymenko, A.F.Koni, V.O. Konovalova, M.V. Kostysky, N.V. Kostyska-Kushakova, V.T. Maljarenko, O.M. Myronenko, M.M. Miheenko, B.M. Poshva, P.M. Rabinovych, V.V. Rechytsky, A.O. Selivanov, M.I. Siry, A.A. Stryzhak, V.M. Shapoval, V.Yu. Shepitkoand many others.

However, despite a large number of publications and scientific works, certain topical issues, in particular, regarding the identification of subjects of evidence in the judicial constitutional process, are still left unexplored, which to a certain extent results in the existence of conflicts and signs of legal uncertainty in the regulations of the law that regulates activity of constitutional jurisdiction as an important element of the national mechanism for the protection of the rights and fundamental freedoms of the individual.

The theoretical basis of the research is the works of domestic and foreign scientists in the field of constitutional law, acts of domestic and foreign law.

The purpose and tasks of the research are:

Definition of the philosophical and legal content, characteristic features and classification of subjects of evidence in the constitutional court process, understanding their role in the theory and practice of constitutional justice.

Presenting main material

Subjects of argumentation in the legal court process are its participants, who are empowered by procedural law to exercise within the framework of procedural relations the activity consisting in collecting, examining and evaluating evidence in order to distinguish and establish the circumstances that are relevant for establishing the truth in a particular case. In this case, as F.Fatkullin correctly observed, "the proof reaches its goal only in cases of the correct definition of the subject of evidence, its boundaries and subjects".[2]

One should also agree with S. Vasyliev, in the opinion of which, "in judicial proof, which covers the procedural activity of all subjects of the process, despite the fact that their functions in proving are different, organically combines the two equal sides: mental and practical are organically. "The correct evaluation of the facts on a decision on the case," he continues, "is the result of procedural activities of not only the court but also other persons involved in the case. Another approach leads to an underestimation of

түсініктемелер. Заң ғылымдарының кандидаты.

Шаптала Наталья Константиновна – судья Конституционного Суда Украины. Родилась 18 апреля 1959 г. в гор. Донецке. После окончания в 1987 г. юридического факультета Алтайского государственного университета, работала на должностях стажера прокуратуры, помощника прокурора Ленинского района г. Донецка, инструктора Ленинского райкома партии, помощника прокурора г. Донецка, старшего помощник прокурора Донецкой обл. В 1996-2006 гг. – судья Ленинского районного суда г. Донецка, судья Апелляционного суда Донецкой области. В 2006-2010 гг. – судья, первый заместитель председателя Донецкого апелляционного административного суда, а с сентября 2010 г. – судья Конституционного Суда Украины. Специалист в области административного, уголовного и налогового права, имеет ряд научных публикаций по этим вопросам. Соавтор учебного пособия «Конституционное право Украины», научно-практических комментариев к Бюджетному и Налоговому кодексам Украины. Кандидат юридических наук.

[2]Фаткуллин Ф. Н. Общие проблемы процессуального доказывания. Казань: Изд-во Казан, ун-та, 1976. С. 7.

the role of the persons involved in the case, in the process of forming by the judges of the correct conclusions about the legal qualification of the facts and the essence of the case. Establishing actual factual circumstances of a case is a duty of the court, the implementation of which is facilitated by the active activity of all other subjects of proof.[3] Consequently, judicial evidence is a form of knowledge, which includes the activities of the court, the persons involved in the case, their representatives"[4]

According to T. Sakhnova, the subjects of evidence "can be divided into leading subjects (court), persons directly interested in the results of the case, that is, the subjects -consumers of the results of the process and their representatives, and other subjects involved in the process of proof (witnesses, experts, translators).[5]

Approximately such a scheme is appliedin the special literature for division of subjects of evidence in litigation in the domestic courts of general jurisdiction and some international courts.

Thus, the subjects of judicial evidence in a civil proceeding are the court, the persons involved in the case, and other process participants who have a material and legal procedural interest in resolving the case and who, in accordance with their procedural rights and obligations carry out actions that are relevant for the resolution of a civil case.

According to M. Strogovych, the subjects of criminal-procedural evidence include the participants of the process, which perform the procedural function (prosecution, defence or decision of the case). Such subjects, in his opinion, are: the court, the prosecutor, the body of inquiry, the accused, the defender, the victim.[6]

Example:

– according to the Criminal Procedure Law of the Republic of Latvia: «subjects of evidence are all those involved in the criminal process, in which this Law imposes a duty or gives them the right to make evidences» (Article 126.1);[7]

– in accordance with Art. 132of the Code of Criminal Procedure of the Republic of Turkmenistan:

Evidence is the collection, study, evaluation and use of evidence in order to establish the circumstances relevant for a legitimate, justified and just settlement of the case (Part 1);

The obligation to prove the existence of the grounds for criminal responsibility and the guilty of the defendant lies with the state prosecutor (Part 2).[8]

[3]It is a matter of court proceedings in matters falling within the competence of courts of general jurisdiction (author's note).

[4]Васильєв С.В. Цивільний процес України – Навчальний посібник. Харьков: Эспада, 2010. С. 204-205.

[5]Сахнова Т. В. Курс гражданского процесса: теоретические начала и основные институты. М.: Волтерс Клувер, 2008. С. 112.

[6]Строгович М.С. Курс советского уголовного процесса в 2-х т. Т. 1. М.: Наука, 1968. С. 203.

[7]Уголовно-процессуальный закон Республики Латвия. Закон, принятый Сеймом 21 апреля 2005 годаи обнародованный Президентом государства 11 мая 2005 года(С изменениями, внесенными по состоянию на 28 сентября 2005 года) URL: http://www.pravo.lv/likumi/29_upz.html (2018, травень, 09).

[8]Уголовный процессуальный кодекс Туркменистана URL: https://www.unodc.org/res/cld/document/tkm /turkmenistan-code-of-criminal-procedure_html/Turkmenistan_Code_ of_Criminal_Procedure.pdf (2018, квітень, 27).

The subjects of evidence in the domestic administrative process in accordance with the Code of Administrative Proceedings of Ukraine are:

1) An administrative court (Articles 17-20);

2) The parties – the plaintiff and defendant, third parties (Article 47);

3) Representatives of the parties and third persons, bodies and persons who have been granted the right to protect the rights, freedoms and interests of other persons in court (Articles 47, 56, 60);

4) Witness, expert, specialist, translator (Article 62).[9]

The subjects of judicial proofing in the economic process are: the court, the persons involved in the case, and other participants in the process, which have a material and legal interest in resolving the case and which, in accordance with their procedural rights and obligations carry out actions that are of importance for the resolution of an economic matter. The main subject of evidence in the economic process is the court of first instance. The court resolves all issues arising in the course of judicial proof, directly examines the evidence submitted by other entities, verifies the truthfulness of the data provided as evidence, and as a result of their assessment, establishes the factual circumstances that are relevant for the correct resolution of the case.[10]

As a rule, such trials are of a competitive character, which, in the words of V.Trubnykov, consists in the principled possibility for the parties to be "informed about all available evidence or fixed comments and have the opportunity to comment on them, to submit any comments, and the duty of the court is to consider them".[11] At the same time, the evidence to support arguments must be submitted by the parties, the court does not collect evidence on its own initiative.

Example:

– According to the Criminal Procedure Code of the Republic of Kazakhstan: «... the court investigates the cases and evidence presented in the manner provided by this Code. The court has no right, on its own initiative, to collect additional evidence in order to eliminate the incompleteness of the pre-trial investigation (Part 1, Article 24).[12]

– In accordance with Art. 15 of the Civil Procedural Code of the Republic of Kazakhstan:

The civil process is conducted on the basis of competition and equality of the parties. The parties involved in the civil process have equal opportunities to defend their position (part 1);

The parties choose their position, methods and means of defending it independently and independently of the court and other persons involved in the case in the course of civil proceedings (part 2);

[9]Кодекс адміністративного судочинства України (Редакція від 05.05.2018) // Відомості Верховної Ради України, 2005, № 35-36, № 37, ст. 446.

[10]Поняття доказування в господарському процесі. Поняття і види судових доказів URL: https://studfiles.net/preview/5704087/page:2. (2018, квітень, 30).

[11]Трубникова Т. В. Право на справедливое судебное разбирательство: правовые позиции Европейского суда по правам человека и их реализация в уголовном процессе Российской Федерации / Т. В. Трубникова. Томск: Изд-во Томск. ун-та. – С. 118–130.

[12]Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года № 231-V URL: http://online.zakon.kz/document/?doc_id=31575852#pos=0;0 (2018Ю березень,01).

The court is completely exempted from collecting evidence on its own initiative in order to establish the actual circumstances of the case, but after motivated party petition it helps to obtain the necessary materials in accordance with the procedure established by this Code (part 3).[13]

This understanding of competition has also been reflected in some judgments of the European Court of Human Rights (ECHR), which state that "the right to a competitive prosecution provides both the prosecution and the defence of the opportunity to read evidence provided by the other party".[14]

At the same time, there are exceptions in domestic law and international judicial practice, in particular, as Y. Orlov notes, - unlike civil justice, in an administrative court does not exclude the possibility of a court to verify information provided by entities, including collecting evidence on its own initiative, if he has doubts about the reliability of these circumstances and the voluntary nature of their recognition. In administrative proceedings, such a rule is justified by the principle of official clarification of circumstances in a case that does not fit into fully adversarial civil proceedings.[15]

The International Commercial Arbitration Court (Tribunal) in the course of the trial generally gives priority to documentary evidence and generally accepts all documents submitted by the parties, but it also has the right to request additional evidence at its own discretion. If necessary, the tribunal or parties to express their views on technical issues or other issues requiring special expertise may be called by experts, but the tribunal is not bound by their views.[16]

As Professor of Law at the University of New Jersey (USA) V. Stan notes, the parties can provide evidence that a court must consider or neglect. Their arguments, as well as evidence from other sources that the court can use to supplement and accumulated knowledge, vary in different court systems. In some countries, for example, the parties can only make a proposal for the involvement of witnesses, and the court decides the expediency of theirengagement. There is also no global rule for defining such concepts as "law", "fact" and "evidence".[17]

Recently, the concept, proposed in its time by A. Belkin, becomes more and more widely used, according to which the court's duty to consider the evidence provided by the parties, so to say, "exclude" it from the list of subjects of evidence in the court proceeding.

[13]Гражданский процессуальный кодекс Республики Казахстан от 31 октября 2015 года № 377-V URL: https://online.zakon.kz/Document/?doc_id=34329053#pos=0;0 (2017, грудень, 12).

[14]Рабінович П., Ратушна Б. Загальнотеоретичні проблеми права на належне доказування в українському судочинстві (у світлі практики Страсбурзького суду) // Вісник Національної академії правових наук України. № 3 (78) 2014. С. 8.

[15]Основы теории доказательств в уголовном процессе: Науч.-практ. gособие. М.: Проспект, 2000. С. 45.

[16]Admissibility and Presentation of Evidence in International Commercial Arbitration. Barrister of England and Wales Senior Partner at G. C. Economou & Associates URL: http://www.greeklawdigest.gr/topics/judicial-system/item/208-admissibility-and-presentation-of-evidence-in-international-commercial-arbitration (2018, may, 14).

[17]Stern William B. Foreign Law in the Courts: Judicial Notice and Proof. California Law Review, March 1957. P. 23.

"The court," he writes, "stands over the parties in the process, he judges, and does not prove, it belongs only to the stage of judicial investigation, the function of research and assessment of evidence provided by the parties. However, the realization of this function does not mean participation in the proof, because the court should not collect evidence, that is, to form an evidential basis".[18]

Y. Kovalenko and P. Lupinskaya hold a similar position, which states, "the diversity of views on this issue is based on the same understanding of evidence only as an activity limited to verifying the truth, the correctness of the thesis being put forward. From these positions it is argued that the court recognizes and proves the parties».[19]

This concept, of course, has the right to life, however, regarding the definition of subjects of evidence in a constitutional court proceeding is completely inappropriate, based in particular on such.

First, the process in the CCU is not competing, therefore, as stated, the persons involved in it, according to the law, have the status of not "parties", which is obligatory in the contest process, but "participants". At the same time, the struggle in this process is excluded when considering all categories of issues, the solution of which relates to the powers of the CCU, and not just the interpretation, according to T. Gabrieva, in which "the peculiarity of cases on the interpretation of the Constitution lies in the fact that there is practically no confrontation between the various parties, but there is a common desire of the participants in the process to find out the content of the constitutional norm".[20]

In our opinion, the false definition of the constitutional court process is competing, as stated by N. Raikova,[21] A. Kalmanov,[22] M.Jaborov,[23] Yu.Kurochtin[24] and others, is that they contend with the constitutional principles and extend its effect to litigation in all branches of law.

Instead, in accordance with the Constitution of Ukraine, competition is not attributed to constitutional principles, but to the principles of the administration of justice by courts of general jurisdiction (Article 129.2.3). Instead, the activity of the CCU, which according to the current version of the Fundamental Law of Ukraine does not belong to the system of domestic justice, is based on the principles: the rule of law, independence, collegiality,

[18]Белкин А. Р. Теория доказывания. М.: Норма, 1999. С. 26.

[19]Коваленко Є.Г. Теорія доказів у кримінальному процесі України: Підручник. К.: Юрінком Інтер, 2006. С. 328.

[20]Хабриева Т.Я. Толкование Конституции Российской Федерации: теория и практика. М.: Юрист, 1998. С. 134.

[21]Райкова Н.С. Принцип состязательности и равноправия сторон в конституционном судопроизводстве // Государственная власть и местное самоуправление. 2006. – С. 16 – 21.

[22]Калманова А. С. Состязательность и равноправие сторон – принципы конституционного судопроизводства URL: http://jurnal.org/articles/2014/uri62.html (2018, квітень, 29).

[23]Жамборов М. С. Особенности принципа состязательности в конституционном судопроизводстве по законодательству России и США // Административное и муниципальное право», 2013, № 1. – С. 12 – 15.

[24]Курохтин Ю. А. Осуществление принципа состязательности вроссийском конституционном судопроизводстве: практика и пути оптимизации // Вестник Тамбовского университета. Серия: Гуманитарные науки, 2001. № 2 (46). – С. 100 – 108.

transparency, reasonableness and binding decisions and conclusions adopted by it "(Art. 147.2), and not based on competition, equality of rights of the parties, etc., which is inherent in courts of general jurisdiction.

«Judicial constitutional control,» J. Ovsepyan rightly observes, "was little connected with the investigation of the actual facts of the case, proof of their completeness and reliability".[25]

In general, it is worth agreeing. However, it should be noted that the functions of judicial constitutional review are not subject to investigation of the actual circumstances of the case, nor a judicial decision in this case, its legality, completeness and probative. His powers include only the resolution of the question of the constitutionality of laws and other legal acts applied by the court and other authorities.

At the same time, the body of constitutional jurisdiction exercising this control is not only not connected with the information provided by participants in the judicial constitutional process, but also uses it at its own discretion and has the authority, if necessary, to obtain evidence on its own initiative, but not by conducting investigative actions and not taking over the functions of the courts of general jurisdiction.

Secondly, the epistemological component of evidence in the trial is to apply axiological and ontological methods in order to know the circumstances that constitute the subject of evidence, and functional – in working with evidence: their collection, study, evaluation and use. Of all these elements, both epistemological and functional, evidence in the constitutional court process to the powers of its participants is only the provision of evidence. Execution of evidence in its entirety is the exclusive prerogative of the CCU and is carried out by its working bodies in order to achieve the final result - the adoption of a reasoned decision in a case, in the order and amount established by law.

«Unlike other courts,» notes M. Kostytsky in this regard, «the burden of proof lies with the CCU, and not on the subjects of the right to a constitutional petition and appeal (or a constitutional complaint)[26] or other participants in the process".[27]

At the same time, proceeding from the content of the provisions of the Law on the Code of Civil Procedure and its Rules, the procedure for evidence in the constitutional court proceeding consists of mandatory stages, each of which the function of proof is implemented by a body designated by them by the CCU:

The Secretariat – at the stage of proof of the admissibility of the materials provided to the Court;

Judge-Rapporteur on the case, the panel of judges, and in some cases the Senate or the Grand Chamber – at the stage of proving the possibility of opening constitutional proceedings in the case;

The Senate or the Grand Chamber – at the stages of evidence in the process of reviewing the case on the merits and taking decisions on issues raised in the constitutional petition, appeal or complaint.

[25]Овсепян Ж. И. Система высших органов государственной власти в России (диалектика конституционно-правовых основ с начала XX по начало XXI в.). Ростов н/Д, 2006. С. 480.

[26]Author's note).

[27]Костицький М. Доказування в конституційному судовому процесі // Вісник Конституційного Суду України № 4–5/2011. С. 163.

Third, since the subjects of the right to a constitutional petition, appeal or complaint and other participants in the constitutional court process (experts, experts, witnesses, etc.) do not have the legislative power to participate in the study, evaluation and use of evidence, their status in this process should be defined as "the subjects of Providing Evidence".

Conclusions

1. Litigation in courts of general jurisdiction tends to be of a competitive nature, the features of which, in particular, are the presence of the parties and the fundamental possibility for them to be informed of all available evidence or fixed observations and to be able to comment, makes any comments, and the duty of the court – to consider them. At the same time, the evidence to support their arguments must be submitted by the parties, and the court, in general, does not collect evidence on its own initiative.

2. At the same time, there are exceptions to this rule in national law and international judicial practice, in particular, unlike civil justice, in an administrative court, the court may, if necessary, verify and supplement the evidence provided by business entities.

3. Judicial constitutional control does not investigate the actual circumstances of the case and the judicial decision made in this case, its legality, completeness and proof. Its powers include solely the resolution of the question of the constitutionality of laws and other legal acts applied by the court or other authorities.

Moreover, the body of constitutional jurisdiction not only is not connected with the information provided by participants in the judicial constitutional process, but also uses it at its own discretion and has the authority, if necessary, to obtain evidence on its own initiative, but not by conducting investigative actions and not taking over the functions of courts of general jurisdiction.

4. The procedure for evidence in a constitutional court proceeding consists of mandatory stages, for each of which the function of proof is realized by a body determined by the CCU:

The Secretariat – at the stage of proof of the admissibility of the materials provided to the Court;

Judge-Rapporteur on the case, the panel of judges, and in some cases the Senate or the Grand Chamber – at the stage of proving the possibility of opening constitutional proceedings in the case;

The Senate or the Grand Chamber – at the stages of evidence in the process of reviewing the case on the merits and taking decisions on issues raised in the constitutional petition, appeal or complaint.

5. Since the subjects of the right to a constitutional petition, appeal or complaint and other participants in the constitutional court process (experts, specialists, witnesses, etc.) are not authorized by the legislator to participate in the study, evaluation and use of evidence, their status in this process should be defined as «subjects of providing evidence».

Н.К. Шаптала: Сот үдерісіндегі дәлелдеу субъектілері: салыстырмалы талдау және философиялық-құқықтық өлшемдер.

Мақала конституциялық сот ісін жүргізу барысында дәлелдемелер мен дәлелдерді зерттеуге арналған. Автор процедуралық құқықтың әртүрлі түрлеріндегі сот ісін жүргізу барысында дәлелдемелерді қабылдау, бағалау және қолдану тәртібін реттейтін шетелдік және ұлттық заңнамалардың салыстырмалы зерттеуін жүргізеді және оның нәтижелеріне сүйене отырып, зерттелетін мәселенің философиялық және құқықтық мағынасын түсінуге өзіндік көзқарас ұсынады.

Түйінді сөздер: дәлелдемелер, дәлелдеу, заңдардың конституциялылығы, дәлелдеу субъектісі, дәлелдемелерді ұсынатын суббъекті, сот ісін жүргізу.

Н.К. Шаптала: Субъекты доказывания в судебном процессе: сравнительный анализ и философско-правовые измерения.

Статья посвящена исследованию доказательств и доказывания в конституционном судебном процессе. Автор проводит сравнительное исследование зарубежного и отечественного законодательства, которым регламентирована процедура принятия, оценки и использования доказательств в судебных процессах различных видов процессуального права и, основываясь на его результатах, предлагает свой оригинальный подход к пониманию философско-правового смысла исследуемой проблемы.

Ключевые слова: доказательство, доказывание, законодательство конституционность, субъект доказывания, субъект представления доказательств, судебный процесс.

Библиография:

1. Фаткуллин Ф.Н. Общие проблемы процесуального доказывания. Казань: Изд-во Казан, ун-та, 1976. – 206 с.

2. Васильєв С.В. Цивільний процес України – Навчальний посібник. Харьков: Эспада, 2010. – 688 с.

3. Сахнова Т.В. Курс гражданського процесса: теоретические начала и основне институты. М.: Волтерс Клувер, 2008. – 696 с.

4. Строгович М.С. Курс советского уголовного процесса в 2-х т. Т. 1. М.: Наука, 1968. – 468 с.

5. Трубникова Т.В. Право на справедливое судебное разбирательство: правовые позиции Европейского суда по правам человека и их реализация в уголовном процессе Российской Федерации. Томск: Изд-во Томск. ун-та, 2011. – С. 118-130.

6. Рабінович П., Ратушна Б. Загальнотеоретичні проблеми права на належне доказування в українському судочинстві (у світлі практики Страсбурзького суду) // Вісник Національної академії правових наук України № 3 (78), 2014. С. 7-19.

7. Основы теории доказательств в уголовном процессе: науч.-практ. пособие / Ю.К. Орлов. М.: Проспект, 2000. – 138 с.

8. Stern William B. Foreign Lawinthe Courts: Judicial Notice and Proof // California Law Review, March 1957. – P. 23-48.

9. Белкин А.Р. Теория доказывания. М.: Норма, 1999. – 429 с.

10. Коваленко Є.Г. Теорія доказів у кримінальному процесі України: Підручник. К.: Юрінком Інтер, 2006. – 632 с.

11. Хабриева Т.Я. Толкование Конституции Российской Федерации: теория и практика. М.: Юрист,1998. – 245 с.

12. Райкова Н.С. Принцип состязательности и равноправия сторон в конституционном судопроизводстве // Государственная власть и местное самоуправление. 2006. № 2. – С. 16-21.

13. Калманова А.С. Состязательность и равноправие сторон – принципы конституционного судопроизводства: [електронний ресурс]. – URL: http://jurnal. org/articles/2014/uri62. html.

14. Жамборов М.С. Особенности принципа состязательности в конституционном судопроизводстве по законодательству России и США // Административное и муниципальное право», 2013. № 1. – С. 12 – 15.

15. Курохтин Ю.А. Осуществление принципа состязательности в российском конституционном судопроизводстве: практика и пути оптимизации // Вестник Тамбовского университета. Серия: Гуманитарные науки, 2001. № 2 (46). – С. 100 – 108.

16. Овсепян Ж.И. Система высших органов государственной власти в России (діалектика конституционно-правовых основ с начала XX по начало XXI в.). Ростов н/Д, 2006. – 592 с.

17. Костицький М. Доказування в конституційному судовому процесі // Вісник Конституційного Суду України № 4–5/2011. – С. 158 – 163.

References (transliterated):

1. Fatkullin F.N. Obschie problemi protsessualnogo dokazyivaniya. Kazan: Izd-voKazan, un-ta, 1976. – 206 s.

2. Vasyliev S.V. Tsyvilnyi protses Ukrainy – Navchalnyi posibnyk. Kharkov: Эspada, 2010. – 688 s.

3. Sahnova T.V. Kurs grazhdanskogo protsessa: teoreticheskie nachala i osnovnyie institutyi. M.: Volters Kluver, 2008. – 696 s.

4. Strogovich M.S. Kurs sovetskogo ugolovnogo protsessa v 2-ht. T. 1. M.: Nauka, 1968. – 468 s.

5. Trubnikova T.V. Pravo na spravedlivoe sudebnoe razbiratelstvo: pravovyie pozitsii Evropeyskogo suda po pravam cheloveka i ih realizatsiya v ugolovnom protsesse Rossiyskoy Federatsii. Tomsk : Izd-vo Tomsk. un-ta, 2011. – S. 118–130.

6. Rabinovych P., Ratushna B. Zahalnoteoretychni problemy prava na nalezhne dokazuvannia v ukrainskomu sudochynstvi (u svitli praktyky Strasburzkoho sudu) // Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy № 3 (78) 2014. – S. 7–19.

7. Osnovyi teorii dokazatelstv v ugolovnom protsesse: Nauch.-prakt. posobie / Yu.K.Orlov. M.: Prospekt, 2000. – 138 s.

8. Stern William B. Foreign Law in the Courts: Judicial Notice and Proof // California Law Review, March 1957. – P. 23–48.

9. Belkin A.R. Teoriya dokazyivaniya. M.: Norma, 1999. – 429 s.

10. Kovalenko Ye.H. Teoriia dokaziv u kryminalnomu protsesi Ukrainy: Pidruchnyk. K.: Iurinkom Inter, 2006. – 632 s.

11. Habrieva T.Ya. Tolkovanie Konstitutsii Rossiyskoy Federatsii: teoriya i praktika. M.: Yurist,1998. – 245 s.

12. Raykova N.S. Printsip sostyazatelnosti i ravnopraviya storon v konstitutsionnom sudoproizvodstve // Gosudarstvennaya vlast i mestnoe samoupravlenie, 2006. № 2. – S. 16 – 21.

13. Kalmanova A.S. Sostyazatelnost i ravnopravie storon – printsipyi konstitutsionnogo sudoproizvodstva: [elektronniy resurs]. URL: http://jurnal. org/articles/2014/uri62.html.

14. Zhamborov M.S. Osobennosti printsipa sostyazatelnosti v konstitutsionnom sudoproizvodstve po zakonodatelstvu Rossii i SShA // Administrativnoe i munitsipalnoe pravo», 2013. № 1. – S. 12 – 15.

15. Kurohtin Yu.A. Osuschestvlenie printsipa sostyazatelnosti v rossiys komkonstitutsionnom sudoproizvodstve: praktika i puti optimizatsii // Vestnik Tambovskogo universiteta. Seriya: Gumanitarnyie nauki, 2001. № 2 (46) – S. 100-108.

16. Ovsepyan Zh.I. Sistema vyisshih organov gosudarstvennoy vlastiv Rossii (dialektika konstitutsionno-pravovyih osnov s nachala XX po nachalo XXI v.). Rostovn/D, 2006. – 592 s.

17. Kostytskyi M. Dokazuvannia v konstytutsiinomu sudovomu protsesi // Visnyk Konstitucijnogo Sudu Ukraïni № 4–5/2011. – S. 158-163.