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THE OBJECT AND BURDEN OF PROOF IN THE CIVIL PROCEDURE

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Summary of the doctoral thesis

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CONCEPTUAL RESEARCH MILESTONES

The Topicality and Importance of the Issue Addressed. The provision of fair, efficient, and quality justice stands as a cornerstone of the rule of law. The issuance of a legally sound and substantiated judgment fundamentally hinges upon the accurate determination of case-relevant circumstances. This determination is achieved through a comprehensive evidentiary process, encompassing the elucidation of all pertinent facts within the scope of the evidence, the identification of the party bearing the burden of proof, and culminating in the judge's evaluation and adjudication of these facts.

The accurate identification of the object of evidence is a task of paramount importance, as it constitutes the foundational element of the evidentiary process. Correctly determining the object of evidence is crucial for ensuring the legality and soundness of judicial decisions. Moreover, precise specification of the object of evidence contributes to the organization and efficiency of the process, facilitating its conclusion within a reasonable timeframe.

The procedural stages of evidence and the allocation of the burden of proof among participants in legal proceedings are critically important for the just resolution of cases. The assignment of responsibility for presenting evidence, engaging in evidence collection, and aiding in the judge's impartial evaluation underpins the essence of an adversarial civil trial system. Key considerations include determining the extent of effort required from each party to establish case facts, the degree of the court's involvement in the evidentiary process, and the implications of participant passivity in the evidentiary phase, all of which are vital for the efficacy of civil litigation.

All persons participating in the examination of a civil case are entitled to play an active role in the evidentiary process as it is their right, yet the obligation to substantiate each fact crucial to the equitable resolution of the case is, by law, assigned to specific parties. The rules for allocating the burden of proof constitute a nuanced framework, contingent upon the nature of the civil procedure involved.

Notwithstanding the significance of evidentiary responsibilities and the burdens they entail, the Republic of Moldova has yet to see these subjects thoroughly examined in any monographic studies. Furthermore, the broader concept of evidence has not been the focus of any comprehensive academic inquiry within the nation. Evidence-related issues often create theoretical and practical contradictions, which justify the need to research the institution in question and to clarify contradictory moments concerning the object of evidence, to establish with certainty the facts that are part of the

object of evidence and the particularities of the distribution of the burden of probation in different types of proceedings. It is proposed that through a thorough examination and subsequent legal reform proposals, aimed at *Lex ferenda*, it will be possible to address and rectify existing legislative deficiencies.

Identification of the Scientific Problem. The scholarly landscape reveals a notable absence of a standardized conceptual framework regarding the object and burden of proof within civil proceedings across national, international, and foreign jurisprudence and legislation. Existing statutes offer only piecemeal regulation, lacking explicit references to both the object and burden of proof, thereby emphasizing the practical significance of research in this area. Given that evidence constitutes the cornerstone of civil case adjudication, an in-depth investigation into *"The Object and Burden of Proof in the Civil Procedure"* emerges as a critical endeavor. This research is poised to address the existing legislative voids and theoretical ambiguities, aiming to fortify the legal foundation upon which the adjudication of civil cases rests.

The scientific challenge posited for resolution encompasses the development of a contemporary conceptual framework for the elements of evidence, through delineating the substance of the evidence object, the specifics of evidence disqualification grounds, and the legal essence and scope of the evidence burden. This endeavor aims to elucidate for both theorists and practitioners within the realm of civil procedural law the pertinent facets for the accurate application of legal standards pertaining to these institutions.

The main goal of the thesis The purpose of the paper is to establish the basic concepts of evidentiary process for the development of a thorough procedural science.

The objectives to fulfill the main goal are as follows: **1.** To elucidate the foundational attributes of evidence, its object, and the associated burden through a comprehensive analysis of these institutions; **2.** To ascertain the methodology for identifying the subject matter of evidence and its related content, by defining the set of facts deemed essential for the equitable resolution of a civil case; **3.** To outline the distinct attributes and criteria for disqualification from providing evidence; **4.** To clarify the legal essence and components of the burden of proof; **5.** To determine the principles guiding the allocation of the burden of proof and identify exceptions to these rules; **6.** To develop theoretical frameworks for the scrutinized institutions, thereby shaping future research and regulatory approaches; **7.** To propose amendments for legislative reform (*lex ferenda*) aimed at addressing gaps within procedural law, thereby enhancing the overall civil litigation process.

Research Methodology. Given the nuanced and multifaceted nature of the subject matter, our investigation was underpinned by a multi-methodological approach. The historical method was instrumental in tracing the genesis and evolution of key concepts, as well as in elucidating the legal essence and foundational characteristics of the subject matter. The comparative legal method enabled a meticulous comparison of legislation and doctrinal perspectives across jurisdictions, facilitating the development of comprehensive definitions that encapsulate the requisite elements of the institutions under scrutiny. Employing the dialectical method allowed for an in-depth examination of divergent doctrinal views, thereby aiding in the distillation of the most cogent concepts pertaining to evidence, its object, and the associated burden. Logical analytical techniques, including systemic analysis, induction, and deduction, were pivotal in dissecting procedural law and doctrine, leading to the derivation of definitions that accurately reflect the institutions in question. Synthetic analysis was subsequently employed to distill key insights from the research, culminating in the formulation of legislative proposals (lege ferenda) aimed at refining the existing legal framework.

The normative foundation of this study was anchored in a comprehensive analysis of primary legal documents, including the Constitution of the Republic of Moldova, and the extant legislation governing civil matters and civil procedure in a broad context. This examination was augmented by a comparative review of legislation from various jurisdictions, notably Romania, France, Russia, Poland, and others, alongside pertinent international legal instruments. Additionally, the research thoroughly investigated relevant jurisprudence from international courts, thereby ensuring a robust and comprehensive legal and normative framework.

The empirical dimension of this investigation was underpinned by an analysis of judicial orders, serving as practical manifestations of the application of evidentiary rules, thereby grounding the study in real-world procedural outcomes.

Overview of the Current Research Landscape. In the realm of legal scholarship, both evidence in general and the specific issues concerning the object and burden of evidence remain under-researched. To date, there is a noticeable absence of comprehensive academic works within the national literature that thoroughly explore these fundamental legal concepts. Discussion of evidence and its related facets is often confined to cursory overviews within the broader scope of civil procedure, typically found in textbooks or university syllabi. This surface-level treatment fails to address the depth and complexity inherent in the subject matter.

Moreover, the existing body of literature, both national and international, reveals a landscape rife with doctrinal disputes and divergences. This situation underscores a fragmented understanding and application of evidence-related principles, contrasting sharply with the more developed and diverse discourse evident in the legal scholarship of other jurisdictions. Notable contributions from scholars such as Fodor M., Leș I., Deleanu, Ciobanu V.-M., Croze, H., Morel, Guinchard, S., Hoffschir, N., Решетникова И.В., Девицкий, И., and Треушников highlight the richer dialogue and analysis available beyond the confines of the Republic of Moldova.

Scientific Novelty. This dissertation represents the inaugural comprehensive examination within the Republic of Moldova of the subject and burden of proof in civil proceedings. Its innovation stems from a multi-dimensional analysis of these legal institutions, addressing the diverse interpretations found in existing literature and legislative updates proposed to align with Moldova's obligations as an EU candidate country.

This study provides an exhaustive exploration of the role and significance of judicial evidence in civil litigation, establishes a definitive concept of the evidence object, delineates the facts encompassing the evidence object's content, elucidates the nuances of the burden of proof and its allocation mechanism. For the first time in Moldovan legal scholarship, this work delves into the content and determination methods of the evidence object, evaluates the significance of the grounds for evidence exclusion, scrutinizes the contractual aspects within evidence procedures, assesses the burden of proof elements, and analyzes the distribution of the burden of proof across different types of legal proceedings. Importantly, this research pioneers the investigation of these topics, addressing the urgent need for modernization and proposing substantial legal framework enhancements, marking a significant stride in the evolution of Moldovan civil procedural law.

Research Hypotheses. This dissertation posits several foundational hypotheses, recognizing the pivotal role of evidence as a cornerstone institution upholding individuals' rights to defense and a fair trial, characterized by distinct procedural phases. Firstly, it asserts that the object of evidence constitutes the fundamental mechanism orchestrating the entirety of evidentiary activities, ultimately guiding the issuance of legal and substantiated judgments. It is defined as the aggregate of facts that necessitate verification within a civil proceeding; secondly, the burden of proof is conceptualized as a multifaceted duty incumbent upon trial participants to execute specific actions, with its apportionment contingent upon the procedural context of the case's examination.

Theoretical Significance and Practical Utility of the Work. The examination of evidence encompasses both theoretical and practical relevance. This research into the subject and burden of evidence has facilitated the identification and systematization of all extant concepts related to it, culminating in the formulation of a comprehensive conceptual framework that encapsulates all critical aspects. Concurrently, the study addresses the scholarly void by being the inaugural work to dissect the object and burden of evidence comprehensively. The conceptual frameworks devised, along with the recommendations for legislative reform (lex ferenda), offer a foundation for more efficacious regulation of evidence, its elements, and methods of proof. The insights garnered are poised to benefit a diverse audience, including judges, litigants, legal practitioners, academics, students, and postgraduate scholars, who have an interest in civil procedural law.

Validation and Impact of Research Findings. The *lex ferenda* proposals concerning evidence in civil proceedings have been formally submitted to the appropriate regulatory bodies for consideration.

The research's principal methodological frameworks have been showcased at various scientific symposiums, both internationally[1] and within the Republic of Moldova, affirming its relevance and applicability across different legal cultures. This work's findings have also been disseminated through multiple scholarly articles published in international and domestic journals, further extending its academic footprint.[2] In addition, the research contributed to the academic literature through the publication of a chapter on evidence in civil proceedings in the textbook "*Civil Procedural Law. General Part"*, edited by E. Belei, Chisinau, 2016, (chapter XIV. Probation and Judicial Evidence in Civil Proceedings). Leveraging the thesis's research, I also co-authored the third edition of *"Models of Judicial Acts. Civil Procedure"* (Chisinau, 2014), Chapter I, which includes templates for judicial acts related to evidence, underscoring the practical utility of the research in enhancing legal education and practice.

[1] such as: scientific conferences *Integration through Research and Innovation*, Chisinau, State University of Moldova, (2023, 2019, 2017, 2014, 2013); National Conference with International Participation *Realities and Perspectives of National Legal Education*, Chisinau, State University (2019); International Symposium UNIVERSUL STIINTELOR, 5th edition, Iasi, Romania (2014); *Biennial International Conference*, 8th edition, West University of Timisoara, Romania (2010); etc.

[2] Which can be viewed on page. 34 of the executive summary.

THESIS CONTENT

The ***Introduction*** delineates the relevance and significance of the subject matter, articulates the thesis's main goal and objectives, outlines the research methodology, describes the current state of the field, highlights the scientific novelty, posits research hypotheses, assesses the theoretical significance and practical value of the study, reports on the endorsement of the findings, and provides an overview of the thesis chapters.

Chapter 1 - ***Analysis of the Scientific Situation Regarding the Object and Burden of Proof in Civil Procedure***, addresses all the international, foreign and national regulations and doctrine regarding the object and burden of proof. In Paragraph 1.1, *Scientific Interpretations of the Object and Burden of Proof in Civil Procedure,* it is acknowledged that while the subject of evidence in civil proceedings warrants detailed scientific examination, there is a notable absence of national research dedicated to defining and studying the fundamental concepts of judicial evidence, its object, and burden. The topic has been addressed only peripherally in textbooks or monographs on civil procedural law that consider the civil process in its entirety. Furthermore, as of this writing, no doctoral theses have specifically focused on the subject of evidence or its procedural aspects. Nonetheless, certain authors have endeavored to clarify some of these concepts in their works.

For instance, the 2016 *"Civil Procedural Law"* manual, under the coordination of Belei E., describes judicial evidence as the logical-legal activity conducted by the participants in the process and the court. This activity aims to uncover truthful information about the factual circumstances crucial for the fair resolution of the case. This is achieved by determining the object of evidence, indicating, presenting, researching, and evaluating the judicial evidence. The object of evidence encompasses all circumstances that justify the claims and objections of the parties, as well as other facts significant for the fair resolution of the case. Determining the object of evidence is essential for the just resolution of the civil case, effectively facilitating the achievement of a fair trial in each specific instance. Furthermore, the burden of proof is defined as the obligation of a trial participant to substantiate certain factual circumstances, the failure of which would result in adverse consequences for them. [3]

It is observed that other works also provide a tangential analysis of issues related to the object and burden of proof. Specifically, authors Savva A. and Tihon V. have concluded that "the object of

[3] BELEI, E., BORS, A., **CHIFA, F.** ș.a. *Drept procesual civil. Partea generală.* / Red.șt.-fic A.Cojuhari. Coord. E.Belei. Chișinău: Lexon-Prim, 2016. 464 p., p.264. ISBN 978-9975-4072-9-8

proof encompasses legal facts in the narrow sense, as well as the legal acts that initiated, altered, or extinguished the legal relationship under trial. These include circumstances, facts, acts, or events to which the law attaches certain legal consequences"[4]. Researcher Pisarenco O., in her book *Civil Procedural Law. Course notes*, argues that evidence is the logical-legal activity carried out by the participants in the process and, tangentially, by the court, aimed at obtaining truthful information about the factual circumstances of the occurrence, modification and extinction of legal relations, carried out in a certain procedural form[5] .

Also noteworthy are works that address the practical aspect of evidence such as the Commentary on the Civil Procedure Code of the Republic of Moldova[6] by Prisac A., where the author underscores the significance of evidence and its meticulous examination as foundational to the issuance of a lawful decision. This emphasis on the practicalities of evidence is echoed in the *Handbook of the Judge for Civil Cases,*[7] TITLE III. *Procedure before the first instance* and TITLE IV, *Appeals Against a Court Decision*, the authors have described the most important aspects concerning evidence to be considered by judges at each stage of the civil proceedings.

It is unfortunate that the exploration of evidence and the components that constitute it, particularly the object and burden of evidence, remains under-researched, with scant scholarly articles dedicated to these areas. This scarcity is excepting the contributions made through articles stemming from the context of the associated PhD thesis. In contrast, the legal scholarship in other countries presents a far richer and more varied doctrine on these matters, highlighting a notable gap in the literature within the Republic of Moldova.

In **Romania**, the study of evidence and its related aspects within civil procedure has garnered attention from various authors. Among them, Fodor M. stands out for her contributions through several monographs dedicated to this area, with her most recent work titled *"Evidence in Civil Procedure."*[8]. This particular monograph delves into various facets of evidence, examining them through the lens of Romanian legislation, doctrine, and jurisprudence. Additionally, it's noted that in

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[4] SAVVA A., TIHON V. *Drept procesual civil (partea generală).* Chișinău: Bons Offices, 2012, 220 p. ISBN 978-9975-80-544-5.p. 62

[5] PISARENCO, O. *Drept procesual civil*. Chișinău: Tehnica Info, 2012, 404 p, p. 153. ISBN 978-9975-45-180-2.

[6] PRISAC, A. Comentariul Codului de procedură civilă al Republicii Moldova. Chișinău: Cartea Juridică, 2019. 1316 p. ISBN 978-9975-72-309-1.

[7] POALELUNGI, M., FILINCOVA, S., SÂRCU, I. și alții. *Manualul judecătorului pentru cauze civile* /, ediția a II-a. Chișinău: Tipografia centrală, 2013. 1200 p. ISBN 978-9975-53-197-9.

[8] FODOR M. *Probele în procesul civil. Legislație, doctrină, jurisprudență.* București: Universul Juridic, 2021, 1368 p. ISBN/ISSN: 978-606-39-0783-8.

Romania, university courses on civil procedure often integrate the discussion of evidence not as a standalone chapter but rather within the broader context of the judicial debate.[9]

In Romanian legal literature, the concept of the object of evidence is understood as the acts and facts bearing legal significance, insofar as they establish, alter, or nullify legal relationships. I. Leș interprets this concept as precisely those acts and facts that carry legal weight. Similarly, F. Măgureanu offers a definition of the object of evidence as an "element that needs to be proven, specifically the legal facts in the strict sense and the legal acts that have initiated, changed, or dissolved the legal relationship under consideration - circumstances, facts, acts, or events to which the law attaches certain legal consequences."[10] *The burden of proof,* likewise, has not been a subject of separate research in the Romanian doctrine, but in the manuals of *Civil Procedural Law* and in the monographs on evidence it is explained through the prism of the distribution of the burden of proof.[11]

The literature from the Russian Federation presents a diverse array of perspectives on the concept of evidence in legal proceedings. Notably, И.В. Решетникова's works stand out for their nuanced distinction of the examined concepts. Решетникова posits that evidence represents a distinct type of cognitive activity, uniquely characterized by legal principles and enforced by the judiciary as the mechanism for resolving disputes.[12] In contrast, А. Ф. Клейнман offers a differing viewpoint, arguing that the process of evidence gathering in civil litigation is an activity solely undertaken by the parties involved. From this perspective, the role of the court does not extend to evaluating the evidence presented. However, a considerable segment of contemporary Russian procedural law scholars contend that the practice of evidence encompasses a broader procedural activity, involving both the litigants and the judiciary in the evaluation of evidence.[13]

There were different views on the *subject of the evidence.* There are well-researched works which analyse the object of the evidence and specify which facts are included in the object of the evidence. Thus, Девицкий И., in researching the object of evidence, considers it to be any circumstance (fact), which is examined in the court hearing, considering it absolutely inappropriate to

[9] LEȘ, I. *Drept procesual civil.* București: Lumina Lex, 2002, 696 p., p.548. ISBN 973-588-548.
[10]MĂGUREANU, F. *Înscrisurile. Mijloace de proba in procesul civil*. Bucureşti: ALL BECK, 1998, 232 p., p.29. ISBN: 973-98765-1-X.
[11] LEȘ I. *Drept procesual civil. Op.cit.,* p. 292.
[12] РЕШЕТНИКОВА, И.В. Курс *доказательственного права в российском гражданском судопроизводстве*, Москва: Норма, 2000, 288 с., с.5. ISBN 5-89123-465-3.
[13]ТРЕУШНИКОВ, М.К. *Судебные доказательства*. Москва: Городец, 1997. 320 с., с. 31. ISBN 5-89391-014-1.

limit the object of evidence only to certain facts,[14] position supported by other proceduralists[15] . Some authors are of the opinion that this position is too extensive, stating that only the acts and facts giving rise to rights and obligations in respect of which the conflict between the parties has arisen and on which the resolution of the case on the merits depends can be included in the subject-matter of the evidence, while the other facts established during the resolution of the case form part of the subject-matter of the evidence.[16]

The burden of proof is treated differently in the Russian literature. Thus, Баулин О opines that the dilemma to be investigated is *the belonging of the given institution to procedural or substantive law*[17] . Although there were different opinions, at the moment, the position argued by Лим А.[18] that the burden of proof is an institution that is a set of rules provided by the rules of procedural law and some rules of substantive law, which guide the court in imposing the obligation to prove the facts important for the just settlement of the case of some subjects of the civil lawsuit, is accepted.

In the US and UK, the approach to the subject matter of evidence diverges notably from continental legal systems, focusing primarily on the relevance of evidence rather than examining it as a separate entity. This perspective emphasizes the significance of evidence in relation to its capacity to influence the outcome of legal proceedings.[19] The concept of the burden of proof further illustrates the distinct legal philosophies between these jurisdictions. In the United States, the burden of proof encompasses both the obligation to present evidence and the necessity for the evidence to be believed as truthful and pertinent to the case's resolution. Conversely, English law differentiates between the burden of presenting evidence and the burden of proof itself. This distinction reflects a nuanced understanding of the roles parties play in litigation: one pertains to the responsibility to introduce evidence, and the other concerns the ultimate obligation to convince the court of the evidence's bearing on the case.[20]

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[14]ДЕВИЦКИЙ, И. К вопросу о понятии предмета доказывания в российском гражданском процессе. В: Академический *юридический журнал*, 2001, №. 4, с.38-44, p.42. ISSN 1819-0928.

[15]ТРЕУШНИКОВ, М.К. *Судебные доказательства*., *Op.cit*., с.20; БАУЛИН, О.В. *Бремя доказывания при разбирательстве гражданских дел*. Москва: Городец, 2004, 272 с., с.61. ISBN: 5-9584-0018-5.

[16]ОСОКИНА, Г. *Гражданский процесс. Общая часть*. Москва: Юристъ, 2004. 667 с., с.558. ISBN 5-7975-0636X.

[17] БАУЛИН О.В. *Бремя доказывания при разбирательстве гражданских дел*. *Op.cit.,* с. 83.

[18]ЛИМ, А. *Распределение обязанности доказывания в арбитражном процессе по российскому законодательству.* Дисс. на соиск. учен. степ. канд. юрид. наук. Москва, 2008. 201 с., с. 65.

[19] CROSS R., WILKINS N. *Outline of the Law of Evidence*. London: Butterworths, 1986. 307 p., p.13. ISBN: 0406570817.

[20] CROSS R., WILKINS N. *Outline of the Law of Evidence*. *Op.cit.,* pp. 27-28.

Paragraph 1.2. *Analysis of the National and International Framework on the Object and Burden of Proof in Civil Procedure,* highlights the importance of regulating the institution of proof, which stems from the absolute necessity to achieve justice, guaranteeing the litigant a fair trial in which the parties have the opportunity to argue and prove their position. The object and burden of proof, being fundamental institutions in civil procedure, are regulated in practice in all democratic states in procedural legislation or, dually, in substantive and procedural legislation and, tangentially, in international acts. At the international level, the following institutions are relevant: - International Covenant on Civil and Political Rights ; - Universal Declaration of Human Rights, New York, 10.12.1948; - Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 04.11.1950. The effects of the ECHR can be analysed in the light of the relevant case law of the European Court of Human Rights, which allows the identification of requirements for evidence in civil cases.[21]

The guarantees outlined in international treaties are further reinforced by constitutional provisions (Articles 20 and 26 of the Constitution of the Republic of Moldova), which lay down the general principles. The specifics of evidence, including the object and burden of proof, are detailed through norms set forth by procedural legislation. Since achieving its status as an independent and sovereign state, the Republic of Moldova has had its procedures for evidence codified in the Civil Procedure Code of the Moldovan SSR since 1964. With the enactment of the new Civil Procedure Code in 2003[22] many of the previous regulations regarding evidence were retained. However, the CPC does not explicitly define evidence, nor does it specify the object and burden of proof; these concepts must be inferred from a comprehensive analysis of all articles related to evidence. It is important to highlight that special rules for determining the burden of proof are also established within substantive law.

Analysing the legislation of other countries, we found that the institution under investigation is regulated differently. Romania's Civil Procedure Code[23] regulates evidence, structuring it in two

[21] See for example: Albina v. Romania judgment of 28.04.2005 [online] [cited 25.09. 2022]. Available: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122732; Van der Hurk v. The Netherlands, 19.04.1994. [online]. [cited 12.02. 2022]. Available: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57878; Perez v. France, 12.02.2004. [online]. [cited 25.09. 2022]. Available: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61629, etc.

[22]Codul de procedură civilă al Republicii Moldova. Nr. 225 din 30.05.2003. In: Monitorul Oficial al Republicii Moldova, 2013, nr.130-134. ISSN 2587-389 X; E-ISSN: 2587-3903.

[23] Codul de procedură civilă al României, nr.134/2010, din 01.07.2010. În: *Monitorul Oficial al României*, 2015, nr. 247. [online]. [citat 25.09.2022]. Disponibil http://www.dreptonline.ro/legislatie/codul_de_procedura_civila_noul_cod_de_procedura_civila_legea_134_2010.php

parts: - *the general part* (art. 249-264 CPC of Romania), which provides for general principles, burden of proof, object of evidence, aspects related to the proposal, granting, admissibility, administration (including agreements on evidence) and assessment of evidence; - *the special part* (art. 265-358 CPC of Romania), which regulates special rules on each means of evidence provided by law.

French law has not abandoned the dual regulation of evidence. Thus, the French Civil Code, Book III, Title III, Chapter 5 (arts. 1353-1386), regulates the burden of proof, the object of proof, the means of proof, their admissibility[24], and the French Code of Civil Procedure[25], in arts. 132-322, provides for the taking of evidence. The dual regulation is also taken up in the legislation of the Canadian province of Quebec.

The CPC of the Russian Federation and the CPC of Kazakhstan[26] contains a chapter dealing with evidence where both general aspects of probation and evidence and special aspects of evidence are regulated, while no definitions of the institutions under investigation are provided. A different approach exists in the CPC of Poland, where Article 227 is even entitled *Definition of the Object of Evidence*.

In American law, *the Federal Rules of Evidence* are a set of provisions governing the presentation and administration of evidence in civil and criminal trials in the federal courts of the United States of America.

In **Chapter 2**, titled ***"The Object of Evidence in Civil Procedure,"*** we conducted a thorough analysis of the prevailing concepts of evidence within the realm of civil litigation. This examination encompassed a detailed exploration of the concept of evidence, the definitive establishment of the stages of judicial evidence, and a comprehensive elucidation of both the concept and the substantive content of the object of evidence. In Paragraph 2.1, titled *The stages of evidentiary process and proofs in civil procedure,* we discovered that the literature presents diverse and sometimes conflicting definitions of judicial evidence. To develop a comprehensive concept that encapsulates the multifaceted nature of this legal institution, it is essential to examine evidence through the perspectives of its participants, its procedural stages, and its overarching purpose. It's important to highlight that

[24] Cod Civil Francais, [online]. [citat 25.09. 2022] Disponibil: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006118074/#LEGISCTA000032042346

[25] Code de Procédure Civile Français. [online]. [citat 25.09. 2022]. Disponibil: https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070716&dateTexte=20050514

[26] Гражданский процессуальный кодекс Российской Федерации. [online]. [cited 25.09. 2022] Available: https://docs.cntd.ru/document/901832805 ; Гражданский процессуальный кодекс Республики Казахстан. [online] [cited 25.09. 2022]. Available: https://online.zakon.kz/Document/?doc_id=34329053#pos=743

the primary actors in this context are the participants of the legal proceedings, as delineated in Article 55 of the Civil Procedure Code (CPC). These participants, especially the parties involved, are crucial because the legal relationship in question exists between them.

The *purpose of* the evidence can be examined *in lato sensu*, so that it can be deduced from the tasks of the civil procedure, established in art. 4 CPC, and in *stricto sensu*, the specific purpose of the evidence being to establish the circumstances important for the fair resolution of the case.

Stages of evidentiary process. Evidentiary process is a complex activity. In our opinion, it is reasonable to divide the stages of the evidence as follows: *1. The identification of the factual circumstances important for the just resolution of the case and the evidence proving them; 2. Determination of the object of the evidence; 3. Collection (gathering) of evidence*, which consists of: *presentation and/or calling of evidence*; *4. Examination (investigation) of evidence; 5. Assessment of evidence.*

The literature commonly regards the assessment of evidence as the concluding phase of the evidentiary process. However, we argue that this process should not merely terminate upon evaluating the evidence's significance. Rather, it should culminate in a definitive *conclusion regarding the existence or absence of the facts underlying the legal action (6).* Segmenting the process into the specified stages facilitates the attainment of evidentiary objectives—namely, to accurately and promptly identify the circumstances crucial for the equitable resolution of the case.

After examining the subjects, the purpose and the stages of judicial evidentiary process, we propose the following definition: *Judicial evidentiary process costitutes a rational and legal process undertaken by trial participants and the judiciary, involving the identification, collection, examination, evaluation of evidence, and the subsequent determination of the presence or absence of pertinent facts.*

The essence of procedural evidence lies in the evidence itself. As defined by Article 117 para. (1) of the CPC, evidence in civil cases is defined as "factual elements, acquired in the manner prescribed by law, which serve to establish the circumstances justifying the claims and objections of the parties, as well as other circumstances important for the just resolution of the case".

Civil procedural law scholarship emphasizes that defining evidence merely as a "factual element" does not fully capture the essence of facts as they truly are. The court receives information about events that have transpired in the past. Consequently, it is suggested that Article 117(2) should

be amended to replace the term "factual element" with "information," to more accurately reflect this understanding.

In the light of the above, *evidence in civil proceedings is considered to be any information about facts obtained in the manner prescribed by law, on the basis of which the court establishes the existence or non-existence of circumstances justifying the claims and objections of the parties, as well as other circumstances which are important for the just resolution of the case.*

Evidence is acquired through ***means of proof,*** which represent the forms in which the necessary information for a just resolution of the case is presented. For evidence to be considered for examination, it must meet the criterion of admissibility. **Admissibility** requires that evidence pertaining to circumstances relevant to the fair resolution of the case must be procured and presented in accordance with legal stipulations.

In Paragraph 2.2, we addressed the *process of determining the object of proof in civil procedure.* We propose that the object of evidence encompasses all facts or circumstances that are pivotal for the equitable resolution of the civil case, including both substantive and procedural elements. This perspective is reinforced by examining the object of proof in conjunction with the core concepts of civil litigation: the plaintiff's claims and the defendant's objections,[27] which may be substantive or procedural in nature.

In order to avoid certain problematic issues, it would be appropriate to include a new article 117^1 in the CPC, which would refer to the subject matter of the evidence, similar to the Polish Code of Civil Procedure.

According to Article 118 CPC, "the circumstances which are important for the just resolution of the case shall be definitively determined by the court, starting from the claims and objections of the parties and other participants in the proceedings, and from the rules of substantive and procedural law to be applied". Examining the legal provisions, we can determine that the object of evidence in contentious proceedings has the following sources of formation:- the object, the basis of the action, as well as the defendant's objections to the action; - the hypothesis and provision of the rule or a series of rules of substantive and procedural law to be applied. An essential difficulty is to determine the subject-matter of the evidence in disputes arising from relationships governed by rules of substantive law with a relatively specific hypothesis. The application of rules with a relatively fixed hypothesis

[27] **CHIFA, F.** Particularităţile obiectului probaţiunii în pricinile privind dreptul de autor şi drepturile conexe. In: *Intellectus*, 2008, nr.2, pp.55-59. ISSN 1810-7079

is carried out in three stages: Establishing the facts that may have legal significance; Evaluating the established circumstances; Formulating a legal conclusion. In the case of the application of legal rules with a fixed hypothesis, the second stage is missing.

The process of identifying the object of evidence commences with the submission of the lawsuit and extends throughout the civil litigation process. However, according to the CPC, the specific timeframe for defining the object of evidence falls within the preparatory phase of the case for trial.

In comparative law, agreements on evidence—voluntary accords through which parties deviate from statutory rules concerning evidence—hold significant importance. Such agreements are viewed as mechanisms capable of streamlining evidentiary rules and reducing the duration of legal proceedings.

The correct identification of the object of evidence is crucial for several reasons: - It forms the foundational element of the evidentiary process;[28] - It influences the legality and substantive validity of procedural actions; - It enhances the organization of the process, ensuring its conclusion within a reasonable timeframe.

In Paragraph 2.3, titled *Facts Constituting the Object of Proof in Civil Procedure*, we delineate the specifics of the object of evidence by identifying the facts it encompasses. The facts crucial for the fair resolution of a case can be categorized based on various criteria that hold both practical and theoretical relevance. Among the most prevalent classifications are:

A) Based on their legal nature, facts can be divided into: a. Material-legal facts (facta, or res probandae), which are the substantive facts under dispute; b. Evidentiary facts (facta, or res probantes), which are used to prove or disprove the material-legal facts; c. Procedural legal facts, which relate to the procedural aspects of the legal process.

These primary facts constitute the object of the evidence, yet there are also ancillary facts that require substantiation. Such facts include those that facilitate the accurate evaluation of evidence and those that contribute to achieving the preventative and educational objectives of the judiciary.

B) According to their nature, facts can be: a. Positive facts, which assert the occurrence of an event or the existence of a condition; b. Negative facts, which denote the absence of an event or condition.

[28] **CHIFA, F.** Importanța determinării corecte a obiectului probațiunii în procesul civil, In: *Simpozionul International „UNIVERSUL STIINTELOR*"/ Rezumatele comunicărilor, Ediția a V-a, 7 sept. 2014, Iași, România. ISSN 2285-8407.

Proving negative material-legal facts poses more challenges than proving positive facts and typically requires the presentation of a contrary positive fact or a related fact to establish proof[29].

The doctrine also proposes the view that in a concrete dispute we can distinguish facts into: *facts that are the basis of the plaintiff's claims, facts that are the basis of the defendant's objections* and *facts that result from the legal rule on the case*. The purpose of this classification is to highlight how the object of the evidence is formed.

In terms of what needs to be proven, we would only refer to the factual part, but concerning legal rules there is a presumption of knowledge of the law adopted and published by any person. The situation is debatable in relation to foreign law, but the presumption mentioned above does not apply to knowledge of the law of other countries.

In Paragraph 2.4, we examined the *grounds for the exemption from presenting evidence.* Art. 123 CPC and Art. 131 para. (4) CPC provide that the participant in the trial may be released from the obligation of probation on the basis of the unanimously acknowledged facts, the prejudicial facts established and in case of their acknowledgement by the opposing party.

Notorious Facts (unanimously recognised). The legal literature determines notorious facts as those known to an indeterminate group of individuals, including the judiciary.[30] According to Article 123 (1) CPC, *"facts acknowledged by the court as being of common knowledge (publicly known facts) do not require proof". Nonetheless, it is imperative for the party to retain the right to challenge the notion that a fact is commonly known and to submit evidence contesting the accuracy of the purported fact.*

For a fact to be considered notorious, it must satisfy two concurrent criteria.[31] The first is the *objective element,* necessitating widespread awareness among a broad segment of the population. The second is the *subjective element,* requiring that the fact be known to the court adjudicating the case. It is crucial to recognize that the determination of a fact's notoriety is the prerogative of the court

[29] **CHIFA, F.** Particularităţile probaţiunii faptelor negative în procesul civil. In: *Revista Naţională de Drept*, 2009, nr. 10-12(109), p. 144. ISSN 1811-0770.

[30] МОХОВ, А. А. Подлежат ли доказыванию, факты не подлежащие доказыванию. В: Арбитражный *и гражданский процесс,* 2002, №. 5, с.16-17. ISSN 1812-383X.

[31] **CHIFA, F.** Degrevarea de probaţiune în temeiul faptelor unanim cunoscute (de notorietate publică). In: *Revista Naţională de Drept*, 2007, nr. 7(82), pp. 79-82, p.80. ISSN 1811-0770.

handling the case, as well as of any hierarchically superior courts, which may hold differing perspectives on what constitutes common knowledge.[32]

A characteristic of the notorious facts is their dependence on the territory, so we can highlight:- *universal* facts, - facts known *in the territory of* our *country* and *facts known locally*. In the case of the latter, the court will make a mention in the reasoned part of the judgment about the notoriety of this fact, so that the court can understand the essence of the relief from probation, finding that the given fact is unanimously known in a given locality.

Prejudicial Effect of the Judgment. Facts and legal relationships, once definitively established by an irrevocable judgment, are considered binding on the court adjudicating a subsequent case involving the same parties, as per Article 123 paragraph (2) of the CPC.

Irrevocable judgments possess a prejudicial effect, meaning that they are considered conclusive evidence of the facts and legal relationships they have determined. In contrast, if judgments are not yet irrevocable, they are treated merely as written evidence. Article 123 of the CPC specifies only judgments as documents that may be exempt from the requirement of further proof, without extending this effect to court orders or decisions. This stands in contrast to the approach in the Russian Federation, where not only judgments but also orders and court decisions are endowed with a prejudicial effect (as per Article 61(2) of the CPC of the Russian Federation). This broader application of the prejudicial effect to various types of court rulings is seen as a reasonable measure.

Alongside the act that relieves the defendant of probation, relevant to this institution are the limits of the prejudicial relationship, which are traditionally subjective and objective. The subjective limits result from Art.123 para. (2) CPC: "...*in which the same persons participate*". It should be noted that the legal identity of the parties must be taken into account, but not their physical identity. The objective limits refer to any fact and legal relationship established in the previous judgment.

Prejudicial Effect of the Criminal Judgment. Procedural law provides that "the judgment pronounced by the court in a criminal case is binding on the court called upon to rule on the civil legal effects of the acts of the person against whom the judgment or sentence was pronounced, only if these acts took place and only to the extent that they were committed by the person in question" (123 para. (3) CPC). In order for the criminal judgment to be exempt from probation in the examination of civil cases, the following conditions must be met cumulatively: a) the judgment must be delivered by a

[32] Decizia Colegiului civil, comercial şi de contencios administrativ lărgit al Curţii Supreme de Justiţie din 15 ianuarie 2020, Dosarul nr. 3r-1/20 (3r-251/19). [online]. [citat 24.09. 2022]. Disponibil: http://jurisprudenta.csj.md/search_col_civil.php?id=54924

court competent to examine the criminal case; b) the judgment of the criminal court must have remained irrevocable; c) the judgment must be the result of the resolution of the case on the merits, and not merely an incidental matter; d) the criminal judgment must precede the civil judgment.

The law expressly provides for much narrower limits for the criminal sentence concerning the previous civil judgment, limited to the finding that the crime has occurred and only to the extent that it was committed by a certain person. Sometimes the courts apply the objective limits extensively, considering as uncontested also some facts resulting from the *sentence"*[33] .

As regards the subjective limits, the res judicata effect of the criminal judgment on these elements is *erga omnes*, even for persons who did not participate in the trial. Thus, only the identity of the person of the defendant is relevant.

Article 123 CPC does not provide as grounds for exemption from probation the facts and/or legal relationships established in the contravention decisions. In some countries, the rule on the prejudicial effect of the criminal sentence is applied by analogy to misdemeanour judgments[34] , which we consider to be sensible.

Acknowledgement of Facts by One of the Parties. The admission by one party of a fact on which the other party bases his claim is such as to produce probative effects against the party who has made it and relieves the other party of the burden of proof. According to the law, "if the court has doubts about the admission made, finding that it was made for concealment of the real circumstances of the case or as a result of deceit, violence, threats or error, it shall reject the admission by a decision. In this case, the facts which have been admitted are to be proved under the general rules. The admission of facts made in the first instance shall retain its veracity also in the higher courts" (Article 131 CPC). The judge is entitled to assess the admission made by the party and to uphold it in whole or in part.

The procedural legislation of the Republic of Moldova provides for an active role of the parties in the framework of evidence, based on the principle of adversarial proceedings, thus "the facts alleged by one of the parties do not have to be proved to the extent that the other party has not denied them"

[33] Decizia Colegiului civil, comercial şi de contencios administrativ lărgit al Curţii Supreme de Justiţie din 4 martie 2015, Dosarul nr.2ra-309/15. [online]. [citat 24.09. 2022]. Disponibil: http://jurisprudenta.csj.md/search_col_civil.php?id=17433

[34] Постановление Пленума Верховного Суда РФ от 19.12.2003 N 23 (ред. от 23.06.2015) "О судебном решении". pt.8 [online]. [cited 25.09. 2022]. Available: https://www.consultant.ru/document/cons_doc_LAW_45640

(art 123, alin. (6) CPC. The party's passivity in contesting or expressing disagreement with the facts alleged by the opposing party is tantamount to an admission of them.

A distinction must be made between the recognition of facts and the recognition of the action, since the recognition of the action, being an act of disposition by the defendant, aims to settle the dispute between the parties by recognising the claims made by the plaintiff (recognises the subject-matter of the action), whereas the recognition of facts aims to recognise certain parts underlying the basis of the action, with the effects analysed above on the progress of the proceedings.

Chapter 3 addresses the concept of the ***burden of proof in civil procedure.*** In Paragraph 3.1, titled *The Legal Nature of the Burden of Proof,* we determine that ***the burden of proof represents the obligation of a party involved in legal proceedings to substantiate specific factual circumstances. Failure to fulfill this obligation could result in negative repercussions for the party, manifesting as sanctions inherent to civil procedure.*** The concept of the burden of proof is intrinsically linked to the adversarial principle and has undergone significant evolution over time.

Despite its great practical importance, the *content and legal nature of* the burden of proof remain debatable. The first dilemma to be investigated *is whether the given institution belongs to procedural or substantive law*.[35] In our opinion, the burden of proof is of a procedural nature, since without the work of the court, the content of the burden of proof cannot be established, nor can its allocation be made. At the same time, we cannot deny the influence of substantive legislation, which contains important rules regulating the burden of proof in certain civil cases, indicating concretely which of the subjects of the legal relationship will be responsible for proving certain facts or circumstances, in case of the occurrence of disputes.[36] The key points of this concept are as follows: the rules for allocating the burden of proof are determined by the rules of procedural and substantive law; the subject who allocates the burden of proof in the proceedings is the court; the obligation to prove circumstances of legal significance lies with the persons participating in the case[37] .

Another debatable issue when considering the legal nature of the burden of proof is whether it falls within the category of legal rights or obligations. Doctrinal opinions on the legal nature have always been divided, however, the prevailing view is that the burden of proof is an obligation, and the adverse consequences for failure to meet the burden of proof (dismissal of the action - for the plaintiff,

[35] БАУЛИН, О.В. *Бремя доказывания при разбирательстве гражданских дел*. *Op.cit.* с.83.
[36] See Articles 1015, 1015, 1054, 1450, 1461, 1496, 1598, 2611 of the Civil Code.
[37]ЛИМ, А. *Распределение обязанности доказывания в арбитражном процессе по российскому законодательству. Op.cit.,* с. 65.

loss of the case - for the defendant) are a sanction for failure to meet this obligation to prove. The negative consequences of failure to fulfil the obligation can be divided into procedural and material-legal consequences. Firstly, facts important for the fair resolution of the case[38] and the adoption of an unfavourable decision may be considered as non-existent.

Paragraph 3.2 introduces an innovative perspective on *the content of the burden of proof in civil procedure*, identifying it as a series of obligations that stem from the fundamental principle of proof allocation. This principle dictates that each party is responsible for substantiating their own claims and defenses. To effectively shoulder the burden of proof, the obligated party must undertake the following duties:

1. Obligation to Identify and Present Relevant Factual Circumstances and Evidence: The party bearing the burden of proof is required to specify the facts pertinent to a fair resolution of the case and to provide the corresponding evidence. Specifically, the plaintiff must outline these facts and submit any available evidence at the time of filing. This includes making "requests for evidence production, for an expert report, and for the appointment or reappointment of an expert," (Article 166(2)(b)). (2) lit. e^1), e^2), e^3) and art.167 (1) lit. d), f), g) CPC). The defendant is expected to meet this obligation by submitting their response in accordance with Article 186 of the CPC.

2. ***Obligation to Participate in the Collection (Gathering) of Evidence.*** This duty encompasses several facets, including:

a) *Obligation to Present Evidence:* This involves the actual delivery of evidence to the court. The plaintiff is required to present evidence during both the trial stage and the preparatory phase before court hearings, while the defendant is obligated to do so only from the preparatory phase of the case for court hearings. The burden of proof lies on both parties; however, the court has the authority to request further evidence from the parties and other participants in the proceedings as deemed necessary to confirm the authenticity of the facts presented. The obligation to present evidence entails specific considerations for each type of evidence.

b) *Claiming of Evidence:* As per Article 119 of the Civil Procedure Code (CPC), should there be obstacles in collecting evidence, the court may assist in its gathering upon the request of the parties or other participants in the proceedings. For the court to facilitate evidence collection, two cumulative conditions must be met: 1. The requesting party in the proceedings must specify why they are unable

[38] **CHIFA, F.** Particularitățile repartizării sarcinii probației în pricinile privind dreptul de autor și drepturile conexe. In: *Lecturi AGPI*, ediția X-a, Chișinău, 2007, pp 173-176. p. 174. ISBN 978-9975911-03-0.

to obtain the evidence themselves and indicate where it can be found; 2. The requested evidence must be both relevant and admissible. The CPC provides special rules regarding the disclosure of documents.

3. Obligation to Actively Participate in the Examination of Evidence: While the examination (or investigation) of evidence primarily falls within the court's remit, the active involvement of participants in the evidentiary process is a duty emanating from the burden of proof. Evidence is examined according to the particularities of each method of evidence *(such as listening to the explanations of the parties, hearing witnesses, reviewing documents, inspecting physical evidence, playing audio and video recordings, and evaluating expert opinions).* The extent of participation required from the parties varies depending on the type of evidence being considered. This duty underscores the collaborative nature of the evidentiary process, where both the court and the parties contribute to the thorough and fair examination of all relevant evidence.

4. The Obligation to Conduct the Recommendation Assessment and to Contribute to the Judge's Conclusion about the Facts Important for the Just Resolution of the Case. The evaluation of evidence principally falls within the purview of the judiciary; however, the contribution of the parties involved in the litigation cannot be overlooked[39], as each participant has an essential role in forming the conclusion of the court¨ as each plays a pivotal role in shaping the court's final determination. Therefore, it is proposed that Article 130 be amended to include a provision stipulating the following: During legal arguments, the parties shall articulate their evaluation of the evidence presented at trial. The right to a fair trial is fully realized only when the claims and arguments of the parties are earnestly considered—that is, meticulously assessed by the seized court.[40]

Paragraph 3.3 explains the *particularities of the allocation of the burden of proof depending on the type of proceedings.* The literature and the law provide the general rule for determining the burden of proof, which provides that each party must prove the circumstances that it invokes as the basis of its claims and objections unless the substantive law provides otherwise (Art. 118 para. (1) CPC). If we are to refer to time, the burden of proof is initially on the plaintiff. In the case of defenses raised by the defendant to counter the plaintiff's claims, the burden of proof lies with the defendant.

[39]ТРЕУШНИКОВ, М. К. *Судебные доказательства*. *Op.cit.,* с. 43.
[40]Van der Hurk v. Netherlands,19.04 1994. [online] [cited 12.02. 2022]. Available: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57878

Therefore, each party, when raising a new fact in support of its claim or defense, must prove its existence.[41]

Since the plaintiff has proved his allegations, the defendant is obliged to come out of its passivity. The current CPC provides, in Article 131(6), the rule that "obliges" the defendant to come out of passivity, otherwise, if he does not deny the facts alleged by the plaintiff, he does not have to prove them. If the defendant relies on certain circumstances in his reasoning for his denial, the burden of proof shifts to him. It is therefore clear that the burden of proof is shared between the plaintiff and the defendant.

We note that this approach to the allocation of the burden of proof in the literature and in the law is related to the procedure in *civil actions*, in which each party has to prove the circumstances he alleges as the basis of his claims and objections, unless the organic law provides otherwise.[42]

The foundational principle in *administrative proceedings* is articulated in Article 93 of the Administrative Code, which mandates that each party must substantiate the facts underpinning their claims. However, this rule allows for exceptions wherein each participant is required to verify facts that are exclusively within their domain of activity. Unlike in civil litigation, judges in administrative cases play a proactive role in gathering evidence and are empowered to independently examine the facts of the case (Art. 194 Administrative Code, Art. 216 Administrative Code). Furthermore, the court is entitled to request from the defendant and other parties involved in the proceedings, either upon application or sua sponte (on its own initiative), any explanations pertaining to the administrative action or any evidence deemed necessary for the comprehensive evaluation and equitable resolution of the case (Art. 216 Administrative Code). This includes the authority to seek information and to demand documents and records (Art. 87 Administrative Code). Failure to comply with the obligation to present evidence can result in sanctions against the non-compliant party.

The special procedure stands distinct from other judicial processes, notably in terms of evidence rules.[43] Its unique characteristics—namely, the lack of a legal dispute and the absence of two parties with opposing interests—delineate the allocation of the burden of proof. Primarily, this responsibility rests with the petitioner, and only secondarily with the person concerned, given that

[41] FODOR, M. Consideraţii asupra reglementării probelor în noul Cod de procedură civilă In: *Dreptul,* 2011, nr.12, pp. 52-84., p.52. ISSN 1018-0435.
[42] The particularities of the allocation were analysed in the previous paragraph.
[43] CREŢU, V. Schiţă istorică a procedurii civile speciale. In: *Analele ştiinţifice ale Universităţii de Stat din Moldova* 2002, nr.6. pag. 22-31., p. 22.

there are no direct negative consequences for failing to substantiate the alleged facts. Furthermore, in the special procedure, the specific facts that require proof are contingent upon the type of procedure in question and are frequently specified within the Code of Civil Procedure (CPC) or related legislative texts.

The *procedure for implementing protective measures in domestic violence cases* is specifically crafted to safeguard victims. Consequently, the victim's statement alone is deemed adequate for the issuance of a protection order when there is an immediate risk of physical violence. Upon the court's request, entities such as the social welfare department or the police may be asked to provide an assessment report on the family in question and the alleged aggressor. Additionally, the court has the authority to request any other documents deemed necessary for the equitable resolution of the case. It is important to highlight the proactive role of the judge in managing these requests.

In proceedings related to *the suspension or revocation of permits for entrepreneurial activity*, the authorities and institutions legally authorized to request the suspension or, if necessary, the revocation of the entrepreneurial activity permit are required to substantiate their request with evidence. This evidence must demonstrate the entrepreneur's non-compliance with the legal conditions for conducting their activity, including proof that the entrepreneur was duly notified of all identified violations, instructed on how to rectify these deficiencies, and that the entrepreneur failed to address these deficiencies within the specified timeframe. Additionally, any other facts that, according to legal provisions, justify the suspension or, where applicable, the revocation of the license/permit must also be provided.

In the *payment order procedure,* the distribution of the burden of proof adheres to the general rule, requiring the creditor to present all available evidence alongside the application for the order. Should the debtor choose to contest the order, the obligation to provide counter-evidence then falls upon them. Initially, the creditor must demonstrate that their claim qualifies under one of the categories specified by the Civil Procedure Code (CPC) for issuing a payment order. Following this, the creditor is tasked with substantiating the claim itself.

Insolvency proceedings. The Insolvency Act [44] contains specific provisions regarding the burden of proof at various stages of insolvency proceedings. [45]

[44] Insolvency Law No 149 of 29-06-2012 . Published: 14-09-2012. In the *Official Gazette of the Republic of Moldova,* no. 193-197, art. 663. ISSN 2587-389 X; E-ISSN: 2587-3903.
[45] See Art. 63 para. 4; Art. 144 para. 6 Insolvency Law no. 149 of 29-06-2012.

In proceedings considered to be *control proceedings*, where the court verifies the legality of an act (judgment/judgment) issued by another body, without examining the merits, the burden of proof is guided by the principles of the general rule, except that the facts which gave rise to the dispute will not be proved, but only the facts which make the act issued by another body unlawful, so, in principle, there is a presumption of legality, and the illegality must be proved by the person claiming it.

Paragraph 3.4 reveals *special rules for determining the burden of proof in civil procedure*. In specified scenarios, the onus of proof deviates from the principle that it rests upon the claimant, introducing specific legal mandates that either invert the burden of proof or impose particular evidentiary rules. This includes the creation of legal fictions or explicit identification of the party responsible for substantiating a certain fact within the legal process. The Civil Procedure Code (CPC) stipulates that *facts legally presumed to exist do not require proof by the party to whom these presumptions are advantageous. Such presumptions of fact are subject to contestation following the standard rules of evidence by any party involved, unless legally stipulated otherwise (Article 123(4)). This provision empowers both plaintiffs and defendants as beneficiaries of these presumptions within civil proceedings.*

Presumptions can be categorized based on several criteria, which elucidate their distinctive characteristics. Article 123(4) of the Civil Procedure Code (CPC) acknowledges the legal significance of presumptions, which can be differentiated into: 1. *direct* and *indirect* presumptions*; 2*. *absolute* presumptions, or *juris et de jure* (of law and on law) and *relative* presumptions, or *juris tantum* (only of law). Some scholars argue that to fully appreciate the nuances of presumptions, it is essential to classify them according to the specific legal institutions they pertain to. [46]

Presumptions are dynamic in nature, emerging, evolving, and vanishing in alignment with the prevailing legal philosophy of a society, especially when protecting certain social relations becomes a priority.

The purpose of presumptions is to ease the evidentiary burden for a party. It is important to note that the application of a presumption shifts the burden of proof from one party to another. However, this shift does not alter the court's responsibilities in the process of evidence evaluation.

Fictions. Legal fictions represent a formal methodology within the legal framework, characterized by the establishment of propositions that inherently lack factual basis. This technique entails recognizing a particular fact as existent or established, despite its absence in reality, thereby

[46] СЕРИКОВ, Ю. Классификация презумпции в науке гражданского процессуального права. *Op.cit*.

highlighting its fictitious essence. It is pertinent to mention that procedural law does not explicitly reference legal fictions, yet their presence and significance in the realm of evidentiary purposes cannot be overlooked.

Legal frameworks incorporate various mechanisms beyond presumptions to allocate the burden of proof, effectively safeguarding the interests of parties potentially disadvantaged in evidentiary disputes. An illustrative example is Article 129, paragraph (3) of the Administrative Code, which mandates that in instances of uncertainty, it is incumbent upon the public authority to substantiate both the delivery of the individual administrative act to the intended recipient and the precise timing of its receipt. While this stipulation does not constitute a presumption in the technical sense, it explicitly designates the responsible party for furnishing proof of a specific fact, thereby offering protection to those who may face greater challenges in establishing certain details.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The conducted research underscores the relevance and significance of the subject matter. Through comprehensive analyses and findings, the study achieved its objectives and fulfilled its intended purpose. The thesis holds considerable practical value, contributing to the advancement of science, legislation, and judicial practice. This is primarily because the research outcomes aim at refining legislative measures and enhancing the application of legal principles in the specified domain. These results can significantly benefit scientific inquiry and educational endeavors.

Moreover, the practical recommendations outlined in the document are poised to aid judges and legal practitioners in the consistent and accurate application of civil procedural law.

The research has yielded scientific outcomes that address a significant issue within the realm of legal scholarship: the development of a contemporary conceptual framework for the elements of evidence, through delineating the substance of the evidence object, the specifics of evidence disqualification grounds, and the legal essence and scope of the evidence burden. This endeavor aims to elucidate for both theorists and practitioners within the realm of civil procedural law the pertinent facets for the accurate application of legal standards pertaining to these institutions. Consequently, this study presents several theoretical and scientific ***conclusions,*** mirrored in the author's various publications, which encapsulate the achieved results and the methodology employed to meet the research objectives:

1. We have been able to reveal the basic characteristics of probation, the object of evidence and the task of evidence through a multi-aspectual examination of these institutions. Thus in particular we established that:

- The object and burden of proof, and evidence procedure in general, is a subject of major importance and interest in civil proceedings. Through a comprehensive analysis, we have elucidated the fundamental characteristics of evidence, including its objectives and the tasks it entails within civil proceedings. Specifically, our findings highlight the significance and complexity of the subject matter, revealing a notable gap in local legal scholarship regarding civil procedural law. This gap pertains to a lack of in-depth research that thoroughly explores the concepts central to this dissertation. Chapter 1, paragraph 1.1, underscores the critical nature of evidence, as well as the object and burden of proof within civil litigation, pointing out the scarcity of comprehensive studies in this area. Further examination of academic works in this domain led us to recognize that the approaches to understanding and defining the probation, object, and burden of proof vary significantly, complicating the task of delineating these concepts (Chapters 1 and 2, paragraphs 1.1, 2.1, and 2.2). Additionally, a review of procedural-civil law reveals that legislative efforts have not consistently addressed the regulation of the evidence institution effectively, resulting in ambiguous scientific interpretations of this subject (Chapter 1, paragraph 1.2).

- The legal framework of the Republic of Moldova lacks a specific definition of evidence, and there is no consensus on the concept of evidence within the academic literature. An in-depth examination of the evidence institution has led to the characterization of *evidentiary process as a logical-legal operation conducted by both the participants in the legal process and the court. This operation encompasses identifying the subject matter of the evidence, compiling, examining, evaluating the evidence, and ultimately reaching a conclusion regarding the existence or absence of the facts upon which the legal action is predicated. Importantly, the entities responsible for providing evidence include not only the parties involved in the legal proceedings but also the court itself* (Chapter 2, paragraph 2.1).

- Evidence is a complex activity and, by examining its characteristics, *we have established that it has the following stages*: - indicating the factual circumstances important for the just resolution of the case and the evidence to prove them; - determining the object of the evidence; - collecting (gathering) the evidence; - examining (investigating) the evidence; - assessing the evidence (a stage which is usually considered the last in the literature); and - concluding whether the facts on which the

action is based exist or not - an important stage, because the conclusion is not formed solely from the assessment of the evidence. Its inclusion as a stage of the evidence is a novelty for the doctrine of the Republic of Moldova (Chapter 2, paragraph 2.1).

- Given that the fundamental component of evidentiary activity is evidence itself, *we argue that* evidence should not be construed merely as factual elements, as stipulated in Article 117(1) of the Civil Procedure Code. Instead, it should be viewed as information regarding facts that are pivotal for resolving the specific case at hand (Chapter 2, paragraph 2.1).

- The Civil Procedure Code (CPC) recognizes various forms of admissible evidence, including the explanations of the parties and other persons with an interest in the case outcome, witness testimony, documents, material evidence, audio-video recordings, and expert opinions, with each type of evidence bearing its unique characteristics. Notably, the legislator does not specifically categorize photography as an independent form of evidence. We contend that when the content of a photograph is of interest, it should be examined and evaluated in a manner akin to that of a video recording (Chapter 2, paragraph 2.1).

- The presentation of evidence is typically governed by a deadline established by the judge during the preparatory phase of the case for judicial hearings. While the legislator has outlined certain exceptions to this rule, these are justifiable primarily on the grounds of the right to defense, specifically when a participant objectively lacked the opportunity to present evidence timely. Other exceptions aim at facilitating a comprehensive investigation of the case. However, we argue that to ensure the timely presentation of evidence, the legislator should impose specific responsibilities on the parties, accompanied by corresponding sanction measures, to enforce this obligation (Chapter 2, paragraph 2.1).

- In our view, the *object of the evidence* is the totality of facts and/or circumstances that are relevant to the just resolution of the civil case, and it is inappropriate to use other notions in the context of evidence, such as "limits of evidence" or "object of knowledge", notions which, from a practical point of view, complicate the perception of evidence (Chapter 2, paragraph 2.2).

2. We have delineated the method for identifying the object of evidence and the related matters concerning its content, through specifying the range of facts that must be proven to ensure a civil case is adjudicated fairly. Specifically, we determined that:

- The responsibility for identifying the object of evidence rests with the judge. The court is tasked with defining the object based on the claims and counterclaims of the parties, alongside the

hypotheses and provisions of the applicable substantive and procedural laws. Identifying the object of evidence poses challenges in disputes emanating from relationships regulated by substantive laws featuring relatively defined hypotheses. (Chapter 2, paragraph 2.2)

- In the realm of comparative law, *evidentiary agreements, or consensual arrangements* where parties opt out of statutory evidence rules, hold significant value; such agreements can be established either before the trial begins or during its course. The comprehensive identification of all facts that need to be proven is crucial, as it ultimately influences the outcome of the evidentiary process, the trial at large, and the procedural documents involved. (Chapter 2, paragraph 2.2)

- *We have emphasized* that categorizing the facts that constitute the object of evidence based on various criteria reveals critical nuances of both theoretical and practical relevance. (Chapter 2, paragraph 2.3).

3. We have established the particularities and characteristics of the grounds for probation disqualification, noting the following:

- Article 123 of the CPC outlines the conditions under which evidence is not required, highlighting *notorious facts* as those universally acknowledged, embodying both an objective component—awareness by an unspecified number of people—and a subjective component—recognition by the presiding judge. We assert that the absence of the subjective element morphs a notorious fact into a fact of substantive law that necessitates proof. Therefore, the party is relieved from demonstrating the notoriety of the fact, but rather must prove the fact itself (Chapter 2, paragraph 2.4).

- The concept of *res judicata*, as it pertains to *irrevocable judgments*, signifies that such judgments *have a binding effect.* Prejudiciality is concerned primarily with instances involving the same parties, where the essence lies not in their literal participation in the proceedings but in their participation in a procedural context. In comparison, the Civil Procedure Code (CPC) sets significantly more restrictive boundaries for the impact of a criminal judgment on a preceding civil judgment, confining it to the occurrence of the offense and its commission by a specific individual. Other facts must be determined through the usual procedures, even if the criminal court addressed additional aspects. Regarding the subjective scope, the res judicata effect of a criminal judgment on these aspects is universal (*erga omnes*), affecting even those who were not involved in the trial. Consequently, the only relevant factor is the identity of the defendant (Chapter 2, paragraph 2.4).

- It's crucial to highlight that Article 123 does not exempt from the necessity of proof those facts and/or legal relationships that have been determined in judgments regarding misdemeanors. *We argue that* such judgments should indeed carry a prejudicial effect. This is because, when a court reviews a case of misdemeanor, it not only legally categorizes the incident but also ascertains the guilt of the involved individual. Requiring these facts to be proven again in civil proceedings unnecessarily prolongs the process by revisiting facts that have already been established (Chapter 2, paragraph 2.4).

- Another basis for exemption from the need to provide proof is when one of the parties admits to certain facts. Under our legal system, the admission of a fact does not automatically carry conclusive evidentiary value. The judge has the discretion to evaluate the admission made by the party and can decide to accept it either in full or partially (Chapter 2, paragraph 2.4).

4. We have elucidated the legal nature and the essence of the burden of proof, concluding that: *The burden of proof represents the duty of a lawsuit participant to substantiate specific factual assertions, where failure to do so results in adverse outcomes for the participant through sanctions unique to civil proceedings*. The court is the entity responsible for apportioning the burden of proof, and the onus to demonstrate legally significant facts rests with the case's participants (Chapter 3, paragraph 3.1).

- Regarding the legal nature of the burden of proof, we believe that it is a *procedural* obligation, since without the court's activity, the content of the burden of proof cannot be established, but neither can its allocation be made. At the same time, we cannot deny the influence of substantive law, which contains important rules governing the burden of proof in certain civil cases. The burden of proof is not *a* classical *obligation*, but a particular one, specific only to the institution of probation, without constraint, but with a specific sanction (Chapter 3, paragraph 3.1).

- The structural elements that would represent the content of the burden of proof are not analysed in the literature. We consider that, in order to meet the burden of proof, the participants in the trial have: 1) the obligation to indicate the factual circumstances, which are important for the just resolution of the case and the evidence that proves them; 2) the obligation to participate in the collection (gathering) of evidence, by presenting evidence and means of proof, but also by the claim. 3) the obligation to actively participate in the examination of evidence; 4) the obligation to formulate the assessment of recommendation and to contribute to the formation of the judge's conclusion about the facts important for the fair resolution of the case. (Chapter 3, paragraph 3.2)

5. We have delineated the allocation of the burden of proof and the exceptions to the standard rule governing this distribution, highlighting that:

- The primary guideline for apportioning the burden of proof is articulated in Article 118(1) of the CPC, which mandates that each party must substantiate the facts upon which their claims and defenses are predicated, unless otherwise specified by law. This principle predominantly applies to adversarial proceedings, especially within the realm of civil litigation, whereas different types of proceedings adhere to their distinct regulations. Often, the legislator explicitly dictates the facts requiring proof and assigns the responsibility for proving them. In specialized procedures, the burden of proof typically rests with the claimant and, secondarily, with the respondent. A unique evidentiary duty exists in procedures concerning protective measures against domestic violence, where the victim's testimony alone can suffice for the issuance of a protection order if there is an immediate threat of physical harm. In what are deemed supervisory proceedings, where the court assesses the legality of a decision or judgment issued by another entity without delving into the substantive merits, the burden of proof operates under the general rule's tenets. However, the focus shifts to proving only those facts that render the act by the other entity illegal, thereby establishing a foundational presumption of legality (Chapter 3, paragraph 3.3).

- In certain instances, the burden of proof deviates from the standard expectation that it falls on the asserting party, with the law establishing specific directives for how this burden is to be allocated (Chapter 3, paragraph 3.4).

- Our analysis reveals that presumptions represent the most frequent deviations from the general rule. Consequently, facts that are legally presumed to exist do not require substantiation by the beneficiary of such presumption. Nevertheless, these presumed facts remain subject to rebuttal in accordance with the overarching principles of evidence law. Legal fiction constitutes another notable exception to the standard rule of burden allocation (Chapter3, paragraph 3.3).

Based on the research findings and aware of their impact on the national legal framework and case law practice, as well as appreciating their analytical value, we make the following ***recommendations*** for the use of the results obtained in the field of improving legislation *as lege ferenda:*

1. Amendment of Article 117 (1) CPC as follows: *"Evidence in civil cases is information about facts, acquired in the manner prescribed by law, which serves to establish the circumstances justifying the claims and objections of the parties, as well as other circumstances important for the*

just resolution of the case", because, as we have noted, evidence is not factual elements, but is information about facts.

2. Introduction of a new article, 117^1 , which would refer to the subject matter of the evidence. This article would take over the rule from Article 118(3) and provide for a new definition in the first paragraph, thus, the following content is proposed: Article 117^1 *The object of the evidence.* (1) The *object of the evidence is the facts and circumstances important for the just resolution of the case. (2) The facts and circumstances which are important for the just resolution of the case shall be definitively determined by the court, starting from the claims and objections of the parties and other participants in the proceedings and from the rules of substantive and procedural law to be applied.*

3. For the purpose of timely presentation of evidence, we consider that the CPC should be amended by including in Article 119^1 paragraph 6, which would provide that *the party who has submitted the evidence late shall bear the costs of presenting the evidence under paragraphs 3(b) and 4. These costs shall not be apportioned between the parties after the completion of the trial.*

4. The CPC is very ambiguous in terms of terminology, which creates confusion in the practical application of issues relating to the subject matter of evidence. In this regard, we believe that Article 240 (1) CPC should read as follows: "*When deliberating the decision, the court shall assess the evidence, specify the circumstances that are important for the resolution of the case, which have or have not been established, the nature of the legal relationship between the parties, the law applicable to the resolution of the case and the admissibility of the action*".

5. Article 183(2)(b) should read as follows*: determination of the circumstances relevant to the just resolution of the case*.

6. The basis for cancellation in Art. 386 para. (1)(a) refers to the error in the determination of the circumstances important for the just resolution of the case and should read as follows: *the circumstances important for the resolution of the case have not been fully determined and elucidated.*

7. Art. 118 CPC *The obligation to provide evidence in court* does not directly refer to the content of the burden of proof, i.e. it does not specify what the obligation to provide evidence consists of, but only concerns the allocation of the burden of proof. We consider it appropriate to change the name of Article 118 to *Allocation of the burden of proof* and to exclude paragraph 3 and include it in Article 117^1 CPC.

8. The assessment of evidence is predominantly the function of the court, but we cannot ignore the role of the parties in this activity. Thus, we consider it necessary to insert a third paragraph in

Article 130, which would provide*: in the pleadings, the parties shall explain their assessment of the evidence examined during the hearing.*

9. In our opinion, it is necessary to amend Article 123 by excluding paragraph 4, or presumptions are not grounds for exemption from probation.

10. We consider it necessary to introduce a new Article 123^1 with the following content: Article 123^1 *Presumptions. (1)Facts which, according to law, are presumed to be established need not be proved by the person in whose favour they are presumed. (2) The person in whose favour the presumption is established must prove the known, neighbouring and connected fact on which it is based. (3) The presumption of facts may be challenged, in accordance with the general rules of evidence, by the person concerned, unless the law provides otherwise.*

11. It is also necessary to analyse, at legislative level, the appropriateness of including *evidentiary agreements* in the Code of Civil Procedure, but also to supplement the grounds for the disqualification from probation with other judicial acts (judgments) and with *misdemeanour judgments*.

Future Research Directions Based on the Thesis Findings: Based on the comprehensive analysis conducted in this PhD thesis, which focused on evidence, the object, and burden of proof within civil procedure, it is evident that we have shed light on the critical facets of these subjects. The findings not only contribute significantly to the research in the field but also pave the way for future research endeavors. In light of the groundwork laid by this thesis, several prospective research avenues emerge as particularly promising. These include: - Complex Research on the object and burden of proof in proceedings with an element of foreignness; - comprehensive examination of evidence in insolvency proceedings; - Detailed exploration into the application of various means of proof, assessing the need to incorporate additional methods of evidence into the Civil Procedure Code.

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ADNOTARE

CHIFA Felicia, „Obiectul și sarcina probațiunii în procedura civilă”. Teză de doctor în drept la specialitatea științifică 553.03 - Drept procesual civil, Chișinău, 2023

Structura tezei: Teza conține 203 de pagini de text, care includ: adnotări (în trei limbi), lista abrevierilor, introducere, trei capitole, concluzii generale și recomandări, lista bibliografiei consultate din 194 de surse. Rezultatele obținute sunt publicate în 15 articole științifice.

Cuvinte-cheie: probațiune, probă, obiectul probațiunii, circumstanță, fapt, temei de degrevare de probațiune, sarcina probațiunii, mijloc de proba.

Scopul lucrării este de a stabili conceptele de bază ale probațiunii pentru dezvoltarea unei științe procesuale temeinice.

Obiectivele cercetării. Scoplul se va realiza prin: elaborarea unor concepte ale probațiunii, ale obiectului și ale sarcinii probațiunii; identificarea modului de determinare și a conținutului obiectului probațiunii, stabilirea cercului de fapte care fac parte din categoria celor necesare de dovedit, pentru a soluționa just o cauză civilă; stabilirea particularităților temeiurilor de degrevare de probațiune; determinarea naturii juridice și a conținutului sarcinii probațiunii; stabilirea modului de repartizare a sarcinii probațiunii și a excepțiilor de la repartizarea sarcinii probațiunii; formularea propunerilor *de lege ferenda,* în scopul remedierii lacunelor legislative și perfecționării procesului civil.

Noutatea şi originalitatea științifică a lucrării: studiul realizat reprezintă unica lucrare în Republica Moldova ce reflectă obiectul și sarcina probațiunii. Noutatea științifică a acestei lucrări constă în efectuarea unui studiu temeinic al probațiunii, prin care au fost reevaluate etapele probațiunii, a fost constatat modul de determinare a obiectului probațiunii, a fost stabilit conținutul sarcinii probațiunii și a fost analizată oportunitatea includerii unor concepte noi, cum ar fi: convențiile asupra probelor și includerea unor noi temeiuri de degrevare de probațiune.

Rezultatele obținute care contribuie la soluționarea problemei științifice importante rezidă în *elaborarea cadrului conceptual modern a elementelor de bază* a probațiunii prin stabilirea conținutului obiectului probațiunii, a particularităților temeiurilor de degrevare de probațiune, a naturii juridice și a conținutului sarcinii probațiunii, *care a clarificat* pentru teoreticienii și practicienii din domeniul dreptului procesual civil aspectele relevante în vederea aplicării corecte a normelor juridice ce se referă la aceste instituții**.**

Semnificația teoretică a lucrării: cercetarea acoperă golul cauzat de inexistența unei lucrări de specialitate ce ar reflecta probațiunea. A fost efectuată sistematizarea conceptelor doctrinare privind probațiunea, obiectul și a sarcina probațiunii și au fost identificate carențele din cadrul de reglementare și aplicare a aspectelor ce vizează instituțiile cercetate. Todată a fost soluționată o

Valoarea aplicativă a lucrării: conceptele elaborate, precum și recomandările formulate pot fi luate în considerare în cadrul eficientizării și optimizării procesului civil, iar rezultatele obținute vor putea oferi opinii, trimiteri, soluții utile judecătorilor, avocaților, cadrelor didactice, studenților și justițiabililor implicați în procesele civile.

Implementarea rezultatelor științifice: rezultatele cercetării sunt utilizate în procesul didactic și științific de la Universitatea de Stat din Moldova în instruirea studenților și a masteranzilor. Totodată, principale repere metodologice ale lucrării au fost publicate în reviste de specialitate, au fost expuse în diferite foruri științifice internaționale și naționale.

ANNOTATION

Chifa Felicia, "The Object and Burden of Proof in the Civil Procedure".
Ph.D. Dissertation in Law at the Scientific Specialty 553.03 - Civil Procedural Law, Chisinau, 2023.

Dissertation structure: annotations (in three languages), list of abbreviations, introduction, three chapters, conclusions and recommendations, bibliography consisting of 194 titles, 203 pages of text. The results are published 15 academic articles covering the dissertation's subject.

Keywords: probation, evidence, object of probation, circumstance, fact, grounds for exemption from probation, burden of probation, means of proof.

The scope of the paper: The purpose of the paper is to establish the basic concepts of evidentiary process for the development of a thorough procedural science.

Research objectives: the following objectives were achieved: develop several concepts object and task of probation; identify-the method of determining probation and the content of the object of the proof, and establish-the circle of facts that are part of the category of those necessary to prove in order to resolve a civil case fairly; establish-the particularities of the grounds for exemption from probation; determine-the legal nature and content of the burden of probation; establish-the way of distributing the burden of probation and the exceptions to the distribution of the burden of probation; formulate-ferenda law proposals.

The scientific novelty and originality of the dissertation: the study is the only work in the Republic of Moldova that reflects the object and burden of probation. The scientific novelty of the work consists in a thorough study of probation, which re-evaluated the stages of probation, clarified the way of defining the object of probation established the content of the task of probation and, analysed the possibility to include new concepts such as: conventions on evidence and the inclusion of new grounds for exemption from probation, as well as the need for new regulations in the legislation.

Results obtained that contribute to the solution of an important academic problem: the research contributes to the solution of an important scientific problem, which resides in the elaboration of the modern concepts of probation by establishing the content of the object of probation, the legal nature and the content of the burden of probation, which led to the clarification for theorists and the practitioners in the field of civil procedural law of the aspects in order to correctly apply the legal norms that refer to these institutions.

Theoretical significance of the paper: the present research covers the gap in the absence of scholarly work that would analyze the probation activity. Systematization of doctrinal concepts on probation, object and task has been carried out and gaps in the regulatory framework and application of the issues targeting the researched institutions have been identified.

The applicative value of the research: The elaborated concepts, as well as the formulas *of lege ferenda* formulated, can be considered in the efficiency of the civil process. We are confident that the results obtained will offer valuable insights, references, and practical solutions to judges, lawyers, teachers, students, and all participants involved in the Civil Process.

The implementation of the research findings: The results of the investigation are used in the didactic and scientific process at USM, in the training of bachelor-and master degree program students. Also, the results of this study were communicated at various national and international conferences, and published in specialized journals, which contributed to the enrichment of the national theoretical framework.

АННОТАЦИЯ

Кифа Феличия, « Предмет и бремя доказывания в гражданском процессе», докторская диссертация по праву по специальности 553.03 - Гражданское процессуальное право, Кишинёв, 2023.

Структура диссертации: аннотации (на трех языках), список сокращений, введение, три главы, общие выводы и рекомендации, список использованной литературы из 194 источников, резюме, 203 страниц текста. По теме диссертации опубликовано 15 научных работ.

Ключевые слова, доказывания, доказательства, предмет доказывания, обстоятельство, факт, основания для освобождения от дознания, бремя доказывания, средства доказывания.

Цель работы: заключается в установлении основных концепций доказывания для развития основательной процессуальной науки.

Задачи исследования: установление понятий доказывания, предмета и бремени доказывания; выявление способа определения и содержания предмета доказывания, установление круга фактов входящих в категорию необходимых для доказывания; установление особенностей фактов освобождения от доказывания; определение правовой природы и содержания бремени доказывания; установление порядка распределения бремени доказывания; формулирование предложений *lege ferenda*.

Научная новизна и оригинальность диссертации: исследование является единственной работой в Республике Молдова, которая полностью исследует предмет и бремя доказывания в гражданском процессе. Научная новизна данной работы заключается в проведении тщательного исследования доказывания, в ходе которого была проведена переоценка этапов доказывания, выяснен способ определения предмета доказывания, установлено содержание бремени доказывания и возможность введение новых понятий, таких как: конвенции о доказательствах и включение новых оснований освобождения от доказывания.

Полученные результаты способствующие решению важной научной проблемы: исследование вносит вклад в решение важной научной проблемы, заключающейся в разработке современных концепции доказывания путем установления содержания предмета доказывания, правовой природы и содержания бремени доказывания, что привело к уточнению для теорий и практики гражданского процессуального права всех аспектов для правильного применения правовых норм, относящихся к этим институтам.

Теоретическая значимость: в данной работе проведена систематизация доктринальных представлений о доказывание, предмете доказывания и бремени доказывания и выявлены недостатки в рамках их регламентации и применения.

Прикладная ценность исследования: Мы убеждены, что полученные результаты предоставят пользу судьям, адвокатам, преподавателям, студентам и всем участникам процесса.

Внедрение научных результатов: Результаты исследования используются в дидактическом и научном процессе в ГУМе, при обучении студентов и магистрантов. результаты этого исследования были представлены на различных национальных и международных конференциях, опубликованы в специализированных журналах, что способствовало обогащению национальной теоретической базы.

CHIFA Felicia

THE OBJECT AND BURDEN OF PROOF IN THE CIVIL PROCEDURE

SPECIALTY 553.03 - CIVIL PROCEDURAL LAW

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