

ТЕОРІЯ ТА ІСТОРІЯ ПРАВА

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Shaptala N. – Ph.D in Law, Chairman of the Constitutional Court of Ukraine, Kyiv, Ukraine

ORCID: <https://orcid.org/0000-0002-5944-9596>

Axiological Component of Evidence in the Constitutional Court Process

*The article is devoted to the topical low-researched issues related to the definition of the essence of the axiological component of evidence in the constitutional court process and its role in adopting a just and reasoned decision in the case. **The theoretical basis** of the research are the works of domestic and foreign scholars in the fields of philosophy and constitutional law, as well as acts of the domestic constitutional jurisdiction body. **The purpose**. The purpose of the research is to determine the basic fundamentals and principles of applying the methodological tools of axiology as a branch of science of philosophy of law when forming the evidence base in the constitutional court process as the basis for the adoption of a just and reasoned decision of the constitutional jurisdiction body. The **scientific novelty** of the publication is in the fact that the author for the first time conducted a comprehensive study of issues related to the axiological component of evidence in a constitutional legal process. Thus, the materials presented in this article are, in fact, the first scientific study of axiological philosophical methods of obtaining, evaluating and using evidence taking into account the specifics of legal proceedings in the bodies of constitutional jurisdiction. According to the results of the research, the author **conclusions** that: firstly, the concept of «universal values» as a philosophical and legal category and a social phenomenon reflects certain aspects of the phenomena of reality, associated with the social and cultural activities of individual and society. These, as well as the issues related to the selection by people of the area of their activities and the nature of their actions are researched by philosophical doctrine – axiology; secondly, there is no unambiguous approach to the definition of the concept of «value» in the science of the philosophy of law. As a rule, fundamental values of constitutional level include freedom, responsibility, equality, human and citizen's rights and fundamental freedoms. These values are in any time and space, and natural law reflects their universal set; thirdly, the axiological component of the evidence in the constitutional court process is to determine the degree of conformity of the subject of the research of the essence of universally recognised in the society constitutional values, in particular, in the context of their implementation and protection, based on the philosophical foundation of constitutional axiology. In a modern democratic, law-based and social state the system of constitutional values is based on the principle of organic combination of traditions, customs, mental criteria of culture, morality and religion along with the internationally recognised principles of the relationship between the individual and society (in the form of the state and civil society institutions).*

Keywords: axiology; civil society; evidence; state; universal values; freedom; justice.

Introduction

The issues concerning the specifics of functioning of the institute of constitutional judicial review were the subject of research of well-known scholars in the field of constitutional law and constitutional justice: M. Baimuratov, Yu. Barabash, Yu. Baulin, D. Bielov, Yu. Bysaga, V. Boiko, L. Boryslavsky, V. Bryntsev, Yu. Hroshevoi, S. Holovaty, M. Hultai, A. Dubinsky, H. Zadorozhnia, V. Kampo, N. Klymenko, V. Kolisnyk, O. Koni, V. Konovalova, V. Kopeichykov, M. Kostytsky, N. Kushakova-Kostytska, A. Krusian, V. Lemak, V. Maliarenko, M. Orzikh, M. Pogoretsky, P. Rabinovich, A. Selivanov, I. Slidenko, O. Skrypniuk, Yu. Todyka, V. Fedorenko, O. Frytsky, Yu. Shemshuchenko, P. Shliakhtun, V. Shepitko and many others.

However, despite a large number of publications and research works, certain aspects of the philosophical and legal substantiation and legislative regulation of the activities of constitutional justice remain poorly researched. In particular, it is the issue of the lack of determination of the axiological fundamentals of forming the evidence base as an important component of evidence in the constitutional court process.

It is well-known that evidence and rules of evidence are key for any jurisdictional process, including constitutional one, but the influence of axiological factors on the results of their evaluation in order to adopt a legitimate and reasoned judicial decision is significantly different. Thus, the essence of the domestic constitutional court process is that its philosophical content is not focused exclusively on the positivist (dogmatic) understanding of law («the letter of the law»), and to a great extent it is influenced by the ideological doctrine of the primacy of universal values («the spirit of the law»), according to which the laws in their content should be permeated primarily by the ideas of social justice, freedom, equality, etc.

The theoretical basis of the research are the works of domestic and foreign scholars in the fields of philosophy and constitutional law, as well as acts of the domestic constitutional jurisdiction body.

The purpose

The purpose of the research is to determine the basic fundamentals and principles of applying the methodological tools of axiology as a branch of

science of philosophy of law when forming the evidence base in the constitutional court process as the basis for the adoption of a just and reasoned decision of the constitutional jurisdiction body.

Purpose achievement requires solving certain tasks:

- to research general fundamentals of the axiological component of the process of judicial evidence as the intellectual and practical activities of the competent participants in procedural relations, which includes the collection, verification and evaluation of evidence in order to establish the circumstances relevant for the correct resolution of the case;

- to identify the peculiarities of the philosophical and functional specificity of the axiological side of the knowledge of truth by researching, evaluating and applying evidence in a constitutional court process;

- to outline the factors that indicate the need to apply the principles and methodology of axiology as a area of philosophy that studies the nature of spiritual, moral, aesthetic and other values, their relationship between each other, along with social, cultural factors, as well as the personality of an individual.

Presentation of the main material

As it was noted, despite the important role of constitutional justice in the national mechanism for the protection of the status of individual and universal values, it should be stated that the issues related to its epistemology as a definition of the essence, structure, functioning and development of the philosophical content of the judicial constitutional process, still remain poorly researched by the national legal science.

Not much more attention is paid to this issue by foreign scholars, whose researches, as a rule, amount to the definition of the philosophical content of the constitution as one of the subjects of constitutional proceedings.

In this context, it should be noted that the axiological peculiarities of evidence in a constitutional court process of any country, as a rule, result, first of all, from the dominant in society ideological approach to the understanding of the essence and content of constitutional values as the fundamental, value frameworks of the constitutional process and the subject of research of philosophical and legal doctrine on their formation, application and protection – constitutional axiology. At the same time, the scientific concept that the constitutional values are a kind of cultural «code», the specificity of which stems from the fact that each culture generates its own, inherent only to it value system, has received significant support recently in the scientific circles. This «code» ensures the process

of cultural identification of the individual, society and nation as well as the development of national consciousness, preserves the nation as a carrier of a unique, original, inherent only to it.

According to (Venislavskiy, 2011, p. 259-260), the peculiarity of constitutional values is that they «are formed in the public consciousness in fact during the whole time of the establishment of national statehood, are partially reflected or directly enshrined in the various political and legal acts adopted at different stages of development of the state and society and fall into the constitution mostly in its formulated and completed form».

It is worth accepting, based in particular on the fact that according to this concept, the notion of «universal values» is considered not only as a philosophical and legal category, but also as an important for the life of society social phenomenon that reflects certain aspects, sides of the phenomena of reality, related to the social and cultural activities of an individual and society. Accordingly, the axiological dimension of evidence and the process of evidence in a constitutional court process, in our opinion, depends on the essence and content of the values of constitutionalism, since it is the constitutional values that form the subject of constitutional axiology, which in legal science is sometimes regarded as a form of direct relation to the model and practice of real constitutionalism.

Prof. V. Patel (University of Khimjiri, Zia, India) states that the values are the basic principles of our life, which are necessary for the positive behaviour of people in society. They are formed on the basis of interests, choices, needs, desires and preferences and play an important role not only in sociology, but also in psychology, anthropology and related disciplines. The basic human values, in his opinion, are the basis of human existence and are considered to be fundamental to individual, including truth, honesty, loyalty, love, peace, etc. They are grouped in nature, differ in social, cultural, religious, and they are considered universal, eternal, immutable, and applicable to all people (Patel, 2018).

At the same time, in our opinion, the axiological dimension of universal values directly depends on their essence and content, which are determined by the constitution of the state, that is, the main component of the subject of research in the constitutional court process (constitutional judicial axiology) are values that in legal science are considered as a reflection of real constitutionalism – a set of constitutional and legal acts regulating important social relations.

As the Chairman of the Constitutional Court of the Azerbaijan Republic Farhad Abdullayev rightly points out in this context, it is precisely in the «Constitution of the country that broadly reflected the progressive ideas and values that determine the directions of development of modern civilized

societies. Among them, particular attention is paid to respect for the personality and dignity of a person, the formation of public authorities in a democratic manner, the existence of effective mechanisms for the protection of human rights, the guarantee of pluralism in the political system, the achievement of social justice, commitment to universal values, harmonization of national legislation with international law and other principles and values» (Abdullaev, 2014).

At the same time, it should be noted that in the science of the philosophy of law there is no unambiguous approach to the definition of the concept of «values», including in their axiological sense.

Thus, Professor M. Alekseev, considered values, first of all, as elements of the structure of law and divided them into three levels. To the first, he attributed the subject as a carrier of the values available in the law. The subject, in his opinion, is «a figure acting as a carrier of acts that reveal values, in particular, acts of recognition». Values only then become alive and real when they find a living carrier (Alekseev, 1999, p. 74).

M. Alekseev also considered that being recognised for the subject means staying in the sphere of acts of recognition that regulate life in the reality of recognition, the fulfilment of its conditions, experience and contemplation. The second element is the very values. The third one is a specific legal relationship of values among themselves and, moreover, between them and their carrier, in the generally accepted sense of the concepts of «empowerment» and «law enforcement» (Alekseev, 1999, p. 76).

Instead, according to S. Scherba, the values are, first of all, the individual himself/herself, the conditions of his/her existence in society. He writes: an axiological problem – the problem of values, the essence of individual himself/herself and everything that is significant to him/her in the general philosophical and semantic life plan is not less important than ontological or epistemological ones (Shcherba, Shchedrin, & Zahlada, 2004, p. 10).

In this regard, it should be noted that in the scientific community, issues related to the axiological factors of proof in a constitutional legal process are usually considered in the context of a general theory of evidence. Occasionally, the problem of subjective perception of evidence, based on political or religious preferences and moral principles of the subject of proof, that is, the phenomenon of imbalance between the positivist and legal approach to the assessment of evidence is mentioned except in the works: J. M. Wheatcroft, Hannah Keogan. The impact of evidence and forensic evidence on jury perceptions of global and specific testimony (Wheatcroft, & Keogan, 2017), Sullivan, Barry, Just Listening: Equal Principles the

hearings and moral life of judges (Barry, 2016); Sylvain Broward and Christoph Hennigue. Behavioral courts as veto players: lessons from the USA, France and Germany (Brouard, & Hönnige, 2017), Volodymyr Kampo: «The Constitutional Court of Ukraine on the Path to the Doctrine of Real Law» (Kampo, 2011; Brants, & Field, 2016).

Diego M. Papayannis. Independence, impartiality and neutrality in legal proceedings (Papayannis, 2016).

In my opinion, despite the heterogeneity of these and other scientific concepts, a generalizing factor between them is that de facto it reveals the essence of the process of forming the judge's inner beliefs in the context of his/her independence and impartiality. Of course, these factors are acceptable and necessary for the judges of constitutional jurisdiction, but there is a certain difference, the essence of which is that the judges of these bodies, forming their inner convictions, are a matter of determining the meaning of the notion of «inner conviction» of the judge is also considered in connection with the concept of «inner conviction».

For example, as stated in the Decision No. 8-rp/2005 of the Constitutional Court of Ukraine (hereinafter referred to as the CCU, Court) dated October 11, 2005, «in Ukraine, as a social and law-based state, the policy is aimed at creating conditions that ensure a sufficient standard of living, free and comprehensive development of a human being as the highest social value, his/her life and health, honour and dignity».

Yu. Shemshuchenko remarks that in the system of constitutional values that mankind has developed in the process of development of social and personal life the fundamental role should be attributed to freedom, responsibility, equality, justice (Shemshuchenko, 2005, p. 106). It should be noted that a similar opinion was also followed by the CCU, which in its Decision No. 2-rp/2016 dated June 1, 2016 formulated a legal position, the essence of which is that the freedom, that a person has as one of the prerequisites for his/her development and socialisation, is among the fundamental values of effective constitutional democracy. The right to freedom is an integral and inalienable constitutional right of a person and envisages the possibility of choosing his or her conduct for the purpose of free and comprehensive development, to act independently in accordance with his/her own decisions and intentions, to determine priorities, to do everything that is not prohibited by law, to move unimpededly and at its own discretion around the territory of the state, to choose a place of residence, etc. The right to freedom means that a person is free from external interference in his/her activity, with the exception of restrictions established by the Constitution and laws of Ukraine.

At the same time, justice itself is an absolute value, such as truth, goodness, beauty, self-founded and such that is not deduced from higher values. Not accidentally, in the Decision No. 15-rp/2004 dated November 2, 2004, the CCU emphasised that «in the sphere of the realization of the right, justice is manifested, in particular, in the equality of all before the law,... Fair application of the norms of the law is primarily a non-discriminatory approach, impartiality».

At the same time, in our opinion, one should also consider the scientific position of Professor M. Koziubra (Koziubra, 2003, p. 92), who believes that such criteria as justice, reasonableness, equality, legal ideal, will of the people, etc., are characterised by their abstraction and uncertainty and refers to such a criterion as «concrete autonomous person» in the form of «inalienable human rights». He emphasises that «human rights are directly applicable law and can be applied “conigalegete” – contrary to the law, if the law contradicts the fundamental human rights».

The concept of the philosophical and legal category and the social phenomenon of values as criteria of universally recognised human and citizen's rights and fundamental freedoms are to some extent supported by other scholars.

Thus, in the textbook «Constitutional Law of Ukraine», general human values are considered as traditional liberal civil and political rights, the understanding of which was formulated in the process of bourgeois revolutions, and then embodied in the practice of law making of democratic states. It is about the right to freedom of thought, conscience and religion, the right of every citizen to participate in public affairs, the right to equality before the law, the right to life, freedom and security of a person, the right to freedom from unjustified arrest, detention, the right to a public hearing by an independent and impartial tribunal, in accordance with all the requirements of fair trial, electoral law, freedom of speech, press and a number of others (Kolishnyk, & Barabash, 2008, p. 106).

Professor A. Meeden wrote (University of Tübingen, Germany) (Needed, 2003) that in the General Declaration we proclaimed that «everyone has the right to an adequate standard of living for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services». Only three years ago, in the Millennium Declaration, all states reaffirmed some fundamental values as «important for international relations in the twenty-first century»: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. They have adopted practical, achievable goals – the Millennium Development Goals – to alleviate the poverty of extreme poverty and provide education, basic health care and clean water – a reality for all.

In scientific circles, there is also a concept whose supporters, in our opinion, not without reason, emphasise the close dependence of understanding of values on the level of legal culture and the legal consciousness of the individual and society as a whole.

In particular, according to I. Yakoviuk, the legal culture (legal awareness) preserves, selects, generates and simultaneously retransmits to all spheres of legal life of society the acquired legal values. At the same time, it absorbs not only the system of values, developed and tested during the history of a specific people, but also able to accumulate the legal wealth accumulated by other peoples. At the present stage of human development, as never before, legal systems, interacting with each other, are in the process of continuous cultural exchange (Yakoviuk, 2007, p. 39).

In this regard, it is worth drawing attention to the fact that, without diminishing the importance of modern acts of international law and scientific concepts in the field of definition and protection of universal values, they should not be taken as modern «know how», since the theoretical foundations and basic concepts of axiology, as the science of such values, were formed in ancient times. For example, Mo-Jizhi «defined justice as the highest value, since it is it which brings benefits to people» (Mo-Czy, 1969, p. 207).

The doctrine of universal values of the eternal moral principles of major world religions was significantly enriched and developed.

So, in addition to the Old Testament Decalogue (Decalogue) of Moses, known as the Ten Commandments, the dialectic of the religious understanding of universal morals, which ideally proclaimed the equality of all people, regardless of their origin and position, was embodied in the Sermon of Jesus Christ of the New Testament (New Testament).

Respect for universal human values has been the basis of Islam, in particular, suicide is prohibited, and hospitality and assistance to the poor are encouraged. The Koran calls for unity for good things, not for enmity. All the time, the emphasis is on the fact that the form of expressing the feelings of people to one another and in relation to Allah must coincide with the internal state, for example: «A kind speech and forgiveness is better than alms followed by injury».

Thus, it should be noted that significant contribution to the formation of a modern understanding of universal values belongs to religious dogmas, as a reflection of the moral principles of Christianity, Islam, Buddhism and other religious ethical teachings, which are based on the

assertion of God as the sole source and criterion of morality, as well as the interpretation of evil as a retreat from divine guidance. As stated in the preamble of the prominent historical monument – the Constitution of Pylyp Orlyk: «in the name of the Father and the Son and the Holy Spirit, God in the Trinity of the Holy Glory» ("Konstytutsiia Pylypa Orlyka", 1710).

Scientific novelty

The scientific novelty of the publication is in the fact that the author for the first time conducted a comprehensive study of issues related to the axiological component of evidence in a constitutional legal process. Thus, the materials presented in this article are, in fact, the first scientific study of axiological philosophical methods of obtaining, evaluating and using evidence taking into account the specifics of legal proceedings in the bodies of constitutional jurisdiction.

Conclusions

The concept of «universal values» as a philosophical and legal category and a social phenomenon reflects certain aspects of the phenomena of reality, associated with the social and cultural activities of individual and society. These, as

well as the issues related to the selection by people of the area of their activities and the nature of their actions are researched by philosophical doctrine – axiology.

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Шаптала Н. К. – кандидат юридичних наук, голова Конституційного Суду України, м. Київ
ORCID: <https://orcid.org/0000-0002-5944-9596>

Аксіологічна складова доказування в конституційному судовому процесі

Проаналізовано актуальні, однак недостатньо досліджені питання, пов'язані з визначенням сутності аксіологічної складової доказування в конституційному судовому процесі та її ролі в прийнятті справедливого й аргументованого рішення у справі. Теоретичним підґрунтям дослідження є праці вітчизняних й іноземних науковців у галузях філософії та конституційного права, а також акти вітчизняного органу конституційної юрисдикції. **Мета** дослідження полягає у визначенні основних засад і принципів застосування методологічних прийомів аксіології як галузі науки філософії права під час формування доказової бази в конституційному судовому процесі, що є основою для прийняття справедливого й обґрунтованого рішення органу конституційної юрисдикції. **Наукова новизна** публікації полягає в тому, це фактично перше наукове дослідження аксіологічних філософських методів отримання, оцінки та використання доказів у контексті специфіки судочинства в органах конституційної юрисдикції. За результатами дослідження автор дійшов **висновків**, що: по-перше, поняття «загальнолюдські цінності» як філософсько-правова категорія та соціальний феномен відображає певні аспекти явищ дійсності, пов'язані із соціальною і культурною діяльністю людини й суспільства. Окреслені, а також питання, пов'язані із вибором людьми наряду їхньої діяльності, характер їхніх учинків вивчає філософське вчення – аксіологія; по-друге, у науці філософії права немає однозначного підходу до визначення поняття «цінності». До фундаментальних цінностей конституційного рівня належать: свобода, відповідальність, рівність, права й основоположні свободи людини і громадянина. Універсальну сукупність таких цінностей відображає природне право. По-третє, аксіологічна складова доказування в конституційному судовому процесі полягає в тому, щоб, ґрунтуючись на філософській основі конституційної аксіології, визначити ступінь відповідності предмета дослідження сутності загальноновизнаних у суспільстві конституційних цінностей, зокрема в контексті їх реалізації та захисту. У сучасній демократичній, правовій та соціальній державі система конституційних цінностей будується за принципом органічного поєднання традицій, звичаїв, ментальних критеріїв культури, моралі та релігії із загальноновизнаними на міжнародному рівні принципами взаємовідносин індивідуума соціуму (в особі держави та інститутів громадянського суспільства).

Ключові слова: аксіологія; громадянське суспільство; доказування; держава; загальнолюдські цінності; свобода; справедливість.