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Logical (Mental) Part of the Knowledge of the Truth in the Constitutional Court Process

*The article is devoted to the topical low-researched issues related to determination of the essence of logical (mental) part of the knowledge of the truth in the constitutional court process. Particular attention is drawn to determination of the general principles and differences of the philosophical and functional specificity of the logic of assessing evidence in the activities of the body of constitutional jurisdiction in protecting human and citizen's rights and fundamental freedoms. 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** of the research is to determine the philosophical and legal dimensions of the logical (mental) part of the knowledge of the truth, including the assessment and use of evidence, in the constitutional court process and their impact on the adoption of a fair and well-founded judicial decision. According to the results of the research, the author provided for certain **conclusions**, which present **scientific novelty** and are the following: firstly, given the basic theoretical doctrine of epistemology, as a branch of philosophy, which studies the problems of the nature of knowledge and its capabilities, the main task of the process of judicial evidence, which takes place in logical forms, is its authenticity and the truth; secondly, one should attribute to the peculiarities of the philosophical and functional specificity of the logical (mental) part of the knowledge of the truth in the constitutional court process, including the study, assessment and use of evidence in resolving issues of constitutionality of laws and other legal acts, first of all, the application of classical evaluation of the true values of information received by the Court, each of which is one of two values – «true» or «false»; thirdly, proceeding from the concept of philosophical monism, according to which the relationship of phenomena is the most common pattern of the existence of the world, the essence of dialectical and formal logic and other categories of science of the philosophy of law in proving in a constitutional court process is to determine these connections under the conditional scheme «the constitution – the law – the by-law – an individual».*

Keywords: version; hypothesis; logic; assessment of evidence; relevance; logical deliberate trick.

Introduction

Problems on the functioning of the domestic institute of constitutional judicial control were studied by well-known specialists in the field of constitutional law, in particular: M. Baimuratov, Yu. Barabash, O. Bandura, Yu. Baulin, V. Boiko, V. Bryntsev, Yu. Hroshevyi, N. Drozdovych, A. Dubinskyi, V. Kampo, N. Klymenko, V. Kolisnyk, A. Koni, V. Konovalova, M. Kostytskiy, N. Kushakova-Kostytska, A. Krusian, V. Lemak, V. Maliarenko, M. Orzikh, M. Pohoretsky, B. Poshva, P. Rabinovych, Yu. Shemshuchenko, O. Skrypniuk, P. Shliakhtun, Yu. Todyka, V. Fedorenko, O. Frytsky and many others.

Nevertheless, despite a large number of publications and scientific works, certain topical issues, in particular, regarding the philosophical and legal determination of ontological and axiological content of the logical part of the knowledge of the truth in the constitutional court process, remain poorly researched.

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 and tasks of the research

The purpose of the research is to determine the philosophical and legal dimensions of the logical (mental) part of the knowledge of the truth, including

the assessment and use of evidence, in the constitutional court process and their impact on the adoption of a fair and well-founded judicial decision.

Purpose achievement requires solving certain tasks:

- to research general principles of the process of judicial evidence, given the basic theoretical concept of epistemology, according to which the prerequisites of knowledge, occurring in logical forms, is its authenticity and the truth;

- to identify the peculiarities of the philosophical and functional specificity of the logical (mental) part of the knowledge of the truth, including through the study, assessment and use of evidence in the constitutional court process;

- to outline the factors, indicating the need to use dialectical and formal logic and other categories of science of the philosophy of law in proving in the constitutional court process.

Presentation of the main material

Dictionaries and special literature define logic as a science that studies the criteria for the correctness of thinking and evidence and is based on formal (traditional) principles of definition, classification, correct use of terms, predication¹, and

¹ Prediction (Latin *praedicatio* means expression, statement) in linguistics is one of the functions of language expression, which aims to correlate the inclination

considerations in general. That means, de facto, that logic is the doctrine of the principles and methods used to understand and solve problems through conscious intellectual analysis.

Thus, according to the Great Glossary of Contemporary Ukrainian Language: «logic is the science of laws and varieties of thinking, ways of knowing and the conditions for the truth of knowledge and judgment». Classical logic is a collection of logical theories characterised by the classical assessment of the true values of evidence, which consists in the fact that the main interpretation is considered as attributing to each evidence one of the two values – «true» or «false». Other interpretations are allowed, but they are considered artificial. The classical understanding of the denial is based on the recognition of the position under which a double denial is equivalent to affirmation (Busel, 2005, p. 625).

According to the special literature, the principles of logic are the general rules of reasoning adopted in it. «To think logically and correctly means to think in accordance with the principles of traditional logic which include:

- the principle of equitation²;
- the principle of consistency³;
- the principle of the excluded third⁴;
- the principle of sufficient reason⁵»

(Ishmuratov, 1997, p. 9-10).

At the same time, professor V. Tytov writes, one should distinguish the logical conclusion from deliberate trick. The scientist notes that there is a textbook example of such a technique, which was used in a polemic against Florida State Senator Claude Pepper, as a result of which he was

defeated in the next election. His adversary said: «... all the FBI and every member of Congress know that Claude Pepper is a shameless extrovert, moreover, there are reasons to believe that he practices nepotism towards his sister-in-law, his sister was a fespianka in sinful New York. Finally, although it is difficult to believe, it is well-known that before marriage Pepper practiced celibacy». This characteristic sounds terrible for the average person. However, for a person familiar with the meaning of the terms used in this provocative accusation, it is clear that it does not make any sense, because the extrovert is an open, sociable person, nepotism means patronage to relatives, fespianka is an admirer of dramatic art, celibate means celibacy. To accuse the man of the fact that he is a sociable person who helps his relatives, that his sister likes the theater, and that he himself was a bachelor until marriage is simply meaningless» (Ishmuratov, 1997, p. 199).

Recently, many scientific studies of judicial logic have been carried out, in particular, in order to identify ways of adequately addressing the challenges facing the judiciary, including the logic of assessing evidence.

Among the foreign publications on this topic, in my opinion, it is worthwhile to note the following articles:

«Arguing about the Evidence: a Logical Approach» (Fox, 2013);

«Logical Theory and Semantic Analysis» (Hacking);

«Rendering the Doi plot properly in meta-analysis» (Suhail, 2018);

«Formal Methods for Logical Evaluation in Forensic Evidence in Court» (Craig, 2016);

«Old Evidence and Logical Omniscience in Bayesian Confirmation Theory» (Garber);

«Logical Normativity and Common Sense Reasoning» (Agaz, 2011);

«Logical Aliens and the 'Ground' of Logical Necessity» (Stroud, 2018);

«Logical and Legal Relevance under the Uniform Evidence Law» (Dahdal, 2007);

«Logical fallacies used to dismiss the evidence on intelligence testing» (Gottfredson, 2009);

«The problem of the logical reconstruction of clinical activity» (Meehl, 1954).

Special mention should be made on the research work of one of the authors of the concept of «logical relevance», professor of Law, Northwestern University (USA), R. Allen «Burdens of Persuasion in Civil Cases: Algorithms v. Explanations», which has become widespread, although it should be noted that its provisions are perceived in scientific circles ambiguously.

In particular, explaining the content of this concept, professor R. Allen notes that this is a relational concept, since it determines that no

of the speech in the reality: the state of the object or subject, event or situation (author's reference).

² The basic tenets of the principle (law) of equitation are that: firstly, it is impossible to equate different thoughts; secondly, it is impossible to accept identical thoughts for different (author's note).

³ The law (principle) of contradictions (Latin *lex contradictionis*) or the law (principle) of noncontradictions (Latin *lex noncontradictionis*) is one of the four basic laws of formal (traditional) logic, according to which: the two opposing statements are not at the same time true, one of them definitely false (author's reference).

⁴ The law of the excluded third (Latin *tertium non data* means «the third is not given») is the law of classical logic, which consists in the fact that two statements – «A» or «not A» – one is necessarily true, that is, two judgments, one of which is a denial of the other, can not be simultaneously false (author's note).

⁵ The law of sufficient reason or the principle of sufficient reason is one of the laws of formal logic, which ensures the validity and proof of thinking, requires the thoughts to be internally linked to one another. According to G. Leibniz: «No phenomenon can appear to be true or valid, no statement is fair without sufficient reason why this is the case, and not otherwise» (author's note).

evidence is relevant in itself, in the absence of its logical connection with others and fact, which is established. In his view, the concept of «relevance» in the first sense means that any two or more relevant evidence are so interrelated that, in accordance with the general course of events, they are taken separately and demonstrate whether it makes it possible to prove the existence or non-existence of facts in the past, present or future (Allen, 2003, p. 898).

The scholar continues that «the second definition is in the Federal Rule of Evidence of the United States (art. 401), according to which evidence is topical (relevant⁶) if «it tends to make the fact more or less probable than it would without evidence». In this case, the concept of «probable» in these and other standard definitions sometimes is interpreted as having a mathematical value of probability» (Allen, 2003, p. 898).

As the professor at the University of Staffordshire (UK) D. McCrimmon noted in this regard the notion of relevance, widely known as «logical significance». This is a bit wrong word, since in this understanding there is a temptation to assume that the definition of relevance as a «logical value» follows from the logical probability theory. However, the term «logical relevance» was not originally conceived in the light of such connotations⁷. In jurisprudence, «logic» is used freely and it refers to the fund of beliefs or generalisations, as well as the types of reasoning that judges or lawyers use in defining as «common sense» (MacCrimmon, 2001-2002, p. 1441).

The relevance, as it is stated in the Stanford Encyclopedia of Philosophy, «is a matter of logic, not of the law», which does not mean that the matching of the desired result to the desired one has no legal dimension. The law distinguishes between law and factual issues. The issue that matters in the case is the issue of the law that a judge must make before a decision, and not a jury, since the relevance is determined by lawful sources, which the judge should be guided by in the legal definition process. At the same time, the legal definition is considered to be logical and non-legal concept in the sense that, when assessing evidence, the judge necessarily relies on extra-judicial resources and is not bound by legal precedents ("The Legal Concept", 2015).

Thus, in our opinion, there are reasons to believe that although the process of assessing evidence is not purely scientific, in the context of the fact that it is not intended to know the laws of the physical and social conditions of their occurrence, however, the cognitive mental activity of the subject

of evidence on detection or confirmation of facts, circumstances or phenomena of reality, *de facto* is carried out with the application of dialectical and formal logic and other categories of science of the philosophy of law.

S. Semenko rightly points out that the assessment of evidence includes two aspects: certifying and logical ones. The certification aspect consists of procedural rules for obtaining evidence, established by law to guarantee the authenticity of the information received. Logical aspect involves the use of patterns and the laws of logic to substantiate a decision in a case based on the information received (Semenko, 2012, p. 160).

It should also be noted that although the logic of assessing evidence is based on general principles, this activity in every form of procedural law has its own specificity, which is predetermined primarily by the object, the task of proving, as well as the range of its subjects, procedural terms and procedural form.

Thus, unlike general jurisdiction courts, evidence in a constitutional court process is a combination of practical and intellectual activity of judges exclusively, the results of which are issued in the form of an act (decision, opinion, ruling) of the collegial body of the Constitutional Court of Ukraine (Grand Chamber, Senates, Collegia).

From the point of view of formal logic, obtaining of knowledge on belonging, admissibility and reliability of each evidence in any court process is preceded by the hypothesis, but the assessment itself is the result of confirmation or refutation that the subject of evidence carries out through mental operations (analysis, synthesis, comparison etc). However, it can not be denied that the ultimate goal of this activity is to use the knowledge gained to solve the problems facing the court in each particular case (criminal, civil, administrative, etc.).

O. Starchenko writes that the hypotheses in the judicial investigation are called versions, but this is not a specific legal term, it is used in other areas of cognition. Versions that explain the essential circumstances of the case, turn into reliable knowledge through logical justification. It proceeds indirectly, because the events that have taken place in the past, or the phenomena that exist currently, but are not accessible to direct perception, are being learned (Kirillov, & Starchenko, 1987, p. 234).

Logical proof of hypothesis, depending on the method of justification, can proceed in the form of indirect (knock-on) or direct evidence. Indirect evidence is carried out by refuting and excluding of all erroneous versions, on the basis of which one can assert the reliability of the only remaining, assumption, given the peculiarities of the type of litigation (Kirillov, & Starchenko, 1987, p. 235).

With regard to the constitutional court process, the main task of assessing evidence is to resolve issues of compliance or non-compliance of certain normative

⁶ Author's note.

⁷ The connotation (from the Latin *con* – together and *noto* – emphasise, denote) – in logic is used as the equivalent of the concept of automatic deduction (author's note).

acts, both in terms of content and procedure for their consideration and approval, to the requirements of Constitution (constitutionality or unconstitutionality). In other words, it is a classical assessment of true values of evidence, which, as noted, consists in the fact that the main interpretation is regarded as attributing to each evidence one of the two values – «true» or «false». At the same time, proceeding from the concept of philosophical monism, according to which the relationship of phenomena is the most common pattern of the existence of the world, the logic of assesment of evidence in such a process also lies in the definition of these relations under the conditional scheme «the constitution – the law – the by-law – an individual».

«As it can be seen from the transcript of meetings of the Constitutional Court (from the relevant literature) the words: “logic”, “contrary to logic”, and “logical form of thought” were used many times. Special logical terms: “determination”, “thesis”, “reason”, “evidence”, “arguments”, “ground”, “conclusion” (“conclusions”) were used as well. References were made to the laws and requirements of logic: it was said about the “substitution of the thesis” (the law of equiting), there were logical contradictions in the arguments of the parties (the law of contradiction), the requirement “or – or” (the law of the excluded third) was applied, the “sufficient grounds” for conclusions (the law of sufficient reason)» (“Lohika yak nauka”).

On this occasion it should be noted that:

– firstly, according to the Law on the Constitutional Court of Ukraine, presentations of the judges of the Constitutional Court of Ukraine at in-camera part of the plenary session of the Grand Chamber or the Senate are confidential information and can not be disclosed (Article 66.9, Article 67.9). Therefore, it is not clear where the authors of the publication received such information;

– secondly, the judge of the Constitutional Court of Ukraine is entitled to legally express his/her understanding of the logic of the formation of both legal position as well as the provisions of the final act of the Court on the issues that were considered, firstly, by voting, and secondly, in the dissenting opinion, which is provided for in the written form attached to the relevant Act of the Court and is promptly published on the official website of the Court (Article 93.2 of the Law on the Constitutional Court of Ukraine), for example:

– in the opinion of the judge O. Lytvynov, the consistency of practice of the Constitutional Court of Ukraine is quite logical, since establishing of violation of the constitutional procedure for consideration, approval and entry into force of the law, in essence, means that these laws could not take place as acts of higher legal force, and the only consequence of the establishment of such violation is the declaration of the laws unconstitutional in full

by the decision of the Court, therefore further constitutional control of the content of these laws is meaningless (“Okrema dumka”, 2018);

– Judge S. Sas points out «some of the proposed amendments to the Constitution of Ukraine are written confusingly and unclear and violate the laws of logic and systematic approach to analysis and, accordingly, understanding of the administrative and territorial structure of the state. In particular, in the proposed wording of Art. 113.1 of the Constitution of Ukraine, the term “community” is used to designate an administrative-territorial unit, whereas in the Ukrainian language it is used to denote the association (collective) of people» (“Okrema dumka”, 2015);

– thirdly, the Constitutional Court of Ukraine, by reasoning its decisions on the issues examined, has repeatedly applied the methodology of logic as a science of laws and types of thinking, methods of knowledge and the conditions for the truth of knowledge and judgments, for example:

– «systematic and logical interpretation of the provisions of Art. 155 of the Constitution of Ukraine» at the next ordinary session of the Verkhovna Rada of Ukraine «gives grounds for the conclusion that it should be interpreted in conjunction with Art. 158.1 of the Fundamental Law of Ukraine, according to which the draft law on introducing amendments to the Constitution of Ukraine, considered by the Verkhovna Rada of Ukraine and not adopted, may be submitted to the Verkhovna Rada of Ukraine no sooner than one year from the day of the adoption of the decision on this draft law» (“Rishennia KSU”, 2016);

– «the analysis of the content of the constitutional petition provides for the grounds for the conclusion that the declarations of the people’s deputies of Ukraine regarding the unconstitutionality of the disputed provisions of the law without logical conjunction with the relevant articles of the Constitution of Ukraine concerning voluntary consolidation and groundless enrollment of lands, that are the subject of the property rights of the Ukrainian people, to communal and state property, their unreasonable delimitation, as well as creation of grounds for public officials of public authorities and local self-government bodies to commit numerous corruption acts related to the powers of the owner of the land, causing considerable damage to constitutional rights and legitimate interests of the Ukrainian people, are assumption. The Constitutional Court of Ukraine has repeatedly stated that assumptions can not be considered as arguments to confirm the unconstitutionality of legal acts or their separate provisions» (Ukhvala KSU, 2015);

– the Code, which «has a corresponding logically constructed structure, regulates the sequence of procedural actions regarding the consideration and solving the issues related to bringing a person to administrative liability; the

procedure for appealing judge's decision in the case on administrative liability, approved in essence; the procedure for execution of a resolution imposing administrative penalties» ("Rishennia KSU", 2015);

– systemic and logical-grammatical analysis of the phrase «state bodies, enterprises, institutions, organisations» gives grounds for the conclusion that the definitions of «state» are characterised by logically related homogeneous worded words «organs», «enterprises», «institutions», «organisations». It is in this context that the given phrase is lexical and grammatically completed ("Rishennia KSU", 2013);

– on the basis of the systematic analysis of the disputed provisions of the codes the Constitutional Court of Ukraine concluded that they are based on the rule of law principle, in particular on its components, such as effectiveness of the purpose and means of legal regulation, the reasonableness and logic of the law ("Rishennia KSU", 2012).

Conclusions

Thus, the statement, in my opinion, is the final ground for certain conclusions, which are the following:

– Firstly, given the basic theoretical doctrine of epistemology, as a branch of philosophy, which

studies the problems of the nature of knowledge and its capabilities, the main task of the process of judicial evidence, which takes place in logical forms, is its authenticity and the truth;

– Secondly, one should attribute to the peculiarities of the philosophical and functional specificity of the logical (mental) part of the knowledge of the truth in the constitutional court process, including the study, assessment and use of evidence in resolving issues of constitutionality of laws and other legal acts, first of all, the application of classical evaluation of the true values of information received by the Court, each of which is one of two values – «true» or «false»;

– Thirdly, proceeding from the concept of philosophical monism, according to which the relationship of phenomena is the most common pattern of the existence of the world, the essence of dialectical and formal logic and other categories of science of the philosophy of law in proving in a constitutional court process is to determine these connections under the conditional scheme «the constitution – the law – the by-law – an individual».

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Логічний (розумовий) аспект пізнання істини в конституційному судовому процесі

Стаття присвячена актуальним, однак недостатньо дослідженим питанням, пов'язаним з визначенням сутності логічного (розумового) аспекту пізнання істини в конституційному судовому процесі. Увагу акцентовано на визначенні загальних засад і відмінностей світоглядно-функціональної специфіки логіки оцінки доказів у діяльності органу конституційної юрисдикції щодо захисту прав й основоположних свобод людини та громадянина. **Теоретичною основою** дослідження є праці вітчизняних та іноземних науковців у галузях філософії і конституційного права, а також акти вітчизняного органу конституційної юрисдикції. **Мета** дослідження полягає у визначенні філософсько-правових вимірів логічного (розумового) аспекту пізнання істини, зокрема щодо оцінки та використання доказів, у конституційному судовому процесі та їх впливу на прийняття справедливого й обґрунтованого судового рішення. За результатами дослідження автор доходить певних **висновків**, які й становлять **наукову новизну** публікації та полягають у такому: по-перше, з огляду на основну теоретичну концепцію гносеології як розділу філософії, що вивчає проблеми сутності пізнання та його можливостей, головним завданням процесу судового доказування, який відбувається в логічних формах, є його достовірність та істинність; по-друге, до особливостей світоглядно-функціональної специфіки логічного (розумового) аспекту пізнання істини в конституційному судовому процесі, зокрема шляхом дослідження, оцінки та використання доказів під час вирішення питань конституційності законів та інших правових актів, слід віднести, насамперед, застосування класичного оцінювання істинних значень інформації, отриманої Судом, кожному з яких приписують одне з двох значень – «істинне» чи «хибне»; по-третє, з огляду на концепцію філософського монізму, згідно з якою взаємозв'язок явищ є найзагальнішою закономірністю існування навколишнього світу, сутність діалектичної та формальної логіки й інших категорій науки філософії права під час доказування в конституційному судовому процесі полягає у визначенні цих зв'язків за умовною схемою «Конституція – закон – підзаконний акт – людина».

Ключові слова: версія; гіпотеза; логіка; оцінка доказів; релевантність; логічний умисний виверт.