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EVIDENCE IN THE CONSIDERATION OF CASES RELATED TO THE APPLICATION OF A MEASURE OF INFLUENCE

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Annotation
This article provides a theoretical and practical analysis of the issues of proof and proof in the consideration of cases related to the application of measures of influence, issues of proof in the proceedings on the application of measures of legal influence.
Also, this article highlights the consideration of cases on the application of measures of legal influence, the analysis of the norms of substantive law concerning the application of measures of influence.

Keywords: measure of influence, evidence, consideration of cases, application of measures, legal influence, principle of distribution, the process of proof and the evidence.

The diversity, pluralism and variability of substantive law rules concerning the application of various measures of influence in the consideration of cases involving the use of legal measures of influence, as well as issues related to the proof and concealment of evidence, also cause inconvenience to the courts.
In the course of the proceedings on the application of measures of legal influence, the issues of proof have their own characteristics that need to be considered separately. Proving is the logical and practical activity of the persons involved in the case, as well as the court in the search and collection, identification, verification and evaluation of evidence that is important for the correct decision [1]. According to article 2016 of the Economic Procedural Code, cases of this category are considered in accordance with the general provisions of the Code (taking into account the provisions of Chapter 27). It follows from this that the evidence and its assessment are also based on the general provisions of procedural law. At the same time, the application of measures of influence, as noted in the above chapters, requires a separate approach and consideration, the higher the level of the parties, the more demanding and thoroughness of the court in relation to evidence is required if court proceedings are mainly intended to be convened by state regulatory authorities bodies.
First of all, the judicial process should focus on the principle of argumentation, which is one of the basic principles of the economic process, determining the reasons for the

claims and objections expressed by the parties, the possibilities and obligations to protect their legal position.

The Economic Procedural Code states that the conduct of proceedings under article 9 is carried out on the basis of tension and equal rights of the parties. That is, disagreements are resolved in order for tmomns to provide their own evidence to support their claims and arguments with which they can enter into cross-disputes. Of course, this principle is one of the fundamental principles of procedural law. In addition, the fact that the court must directly investigate these facts implies the importance and specificity of the standards of provability in the application of measures of influence. It is the application of measures of influence, such as standards of proof, in the biochar economic process, which, as a rule, bear the burden of proof, has not been studied in detail.

Article 69 of the Code of Economic Procedure may require the court to provide additional evidence to the parties if they consider it insufficient. This right to initiative extends the autonomy and capabilities of the court in the process of collecting and proving evidence, but in the legal literature it is argued that it is desirable for the court to grant even broader powers of initiative in collecting evidence. According to the modern procedural and legal literature, for example, the German scientist G. Ruhl, the collection, reclamation and identification of evidence in the process, including additional evidence on its own initiative, is an important autonomy of the court, which affects the fair resolution of the case, and law enforcement agencies should represent such autonomy in a broader form [2]. Similarly, according to many process scientists, the economic court is a subject of proof, as are other participants in the process. That is, it is absolutely correct and normal that the court collects evidence on its own initiative and actively participates in proving.

In the theory of civil and commercial procedural law, the following elements of proof in court are distinguished: determination of the subject and boundaries of proof, collection of evidence, examination of evidence, their evaluation [3]. The composition of the elements of evidence, as well as many issues related to proving in court, are still controversial [4].

Some legal scholars argue that the use of effective measures does not require the collection, evaluation, and examination of evidence in a lawsuit. After all, supporters of this opinion rely on the conclusion that the proof is mainly carried out by regulatory authorities applying the appropriate measure, according to which it is sufficient for the court to make a decision in accordance with the evidence presented [5].

However, the latter opinion, in our opinion, is completely wrong, the fear of cases arising from public legal relations, such as the use of measures of influence, also has

its own subject and scope of desire, for example, cases in the order of a claim in which evidence is collected, investigated, evaluated. This opinion is also confirmed by the second part of article 221 [6] of the Economic Procedural Code, according to which the court, when considering a case on the application of a lawsuit, determines: the fact of the violation event, the grounds for drawing up an act or other document related to the investigation, and the powers of the regulatory authority, whether legislative responsibility for the commission of an offense is provided, As you can see, in any case the work on the application of impact measures involves the identification, collection, verification and evaluation of relevant evidence. Also, according to the legal literature, the issues of qualification of legal relations between the parties (tax, administrative, etc.) are not included in the scope of the subject of proof, and this activity is law enforcement activity [7].

The principle of distribution and intensity of the burden of proof:

According to the procedural legal tradition, the burden of proof implies the need to prove a specific case together with the participants in the case, that if this case is not proven, the situation will not be resolved in favor of this participant (for example, if the plaintiff does not prove his claim, it will be rejected). According to the legal literature, the term "burden of proof" does not impose the burden of proof on the party, according to the influential procedural scientist E.V. Vaskovsky. According to Vaskovsky, none of the parties has procedural obligations, the participants of the zero process are free to perform procedural actions at work [8]. The English scientist R. Thursday argues that English and Continental European procedural law also apply this term in the manner of "burden of proof" and differs from his concept of "Obligation" in that this burden is necessary to defend their claims, but does not impose obligations [9]. And the party wishing to resolve the case in its favor will have to prove the circumstances on which its claims and arguments are based, which means that the burden of proof falls on its shoulders. This is an important element of preventing friction, when each party can prove and argue its own claims and arguments with its own arguments and influence the fairness of the case to be resolved.

When considering cases related to judicial measures, the legal literature often emphasizes the need not only to provide arguments to identify objective reality and make a fair decision, but also for the harmony of argumentation and verification (research) [10]. In this regard, legal process scientists often speak about the need to avoid a one–sided approach in practice - in order to avoid bias (as in case studies) or attachment to one of the approaches to investigation [11]. The same Russian scientist M.K. Treushnikov emphasizes the importance of tension in modern civil (and

economic) proceedings and the flexibility of dispositive provisions with the leading role of the court in resolving the case. The most important thing, in our opinion, is that we should consider the possibility of creating optimal standards of proof by coordinating the content of the evidence requirement (argumentation) and verification (examination of the case on the one hand), as in the case of a trial [12].

This approach is currently also applicable to cases involving the use of judicial measures in the course of economic litigation. In the end, the legal consequence in cases involving the application of measures is the inequality of the parties – the fact that one party is a state body and the other is a legal or natural person also requires a combination of the principles of argumentation and verification. Such activity of the court in collecting and evaluating evidence is explained by the fact that the supervisory authority (the applicant), as the sole owner of the evidence collected by him in the case, voluntarily presents or does not present (hides, does not receive, etc.), with which they can have a greater influence on the resolution of the case and, as a result of the transformation of the evidentiary process to censor, to make the case fair and correct.

The principle of argumentation is manifested in the basic rule of proof in the first part of article 68 of the Commercial Procedural Code, according to which it is stated that the participating person must prove the circumstances that he puts forward on the basis of his claims and objections. But, in our opinion, when working on the application of a measure of legal influence, it is necessary to introduce a rule of proof different from this rule. This is primarily due to the fact that this category of work proceeds from mass legal grounds and is unequal for the parties. When allocating the duty to prove in modern administrative justice, the awareness of the parties is taken into account and the official or administrative body is obliged to independently prove the legality of its action or administrative document [13].

The essence of the work on the application of legal measures follows from the fact that the Supervisory Authority must investigate and substantiate the evidence in the case on which the application of a particular measure is based. But there is also an intersectoral approach and views: in some cases on the rule of law on the application of such measures of influence, a presumption of the correctness of the actions of state bodies is established, that is, a state body may be denied in court, but it is justified if so. not rejected. For example, such a rule also applied in the administrative justice of the former Soviet Union, which means compliance with the procedural legislation of our country: a person complaining about a harkati or a document of an administrative body had to prove this requirement [14].

But even later, in Soviet legal thought and judicial practice, the presumption of the right of a state body was revised. The well-known scientist A. Bonner argued that in disputes concerning administrative legal relations, the burden of proof should be placed on the state body. The creativity of the Norm and judicial practice also confirmed this position later. It is perceived as evidence that it is difficult for a state body to collect evidence to protect its interests in front of a person affected by its actions (inaction) or document, that these arguments are often given by the relevant state body, which makes it difficult for a citizen (or legal entity) to obtain justice.

Rather, when a State body or an official commits an action, especially when trying to apply legal measures (for example, in the case of financial sanctions by a left-wing body), he must have sufficient substantiated evidence and grounds. And, of course, it is considered fair to demand in court the presentation of this basis and evidence from this body or official. In addition, the state body (the supervisory authority in accordance with the economic Procedural Code) has a large resource, enforcement mechanisms and, undoubtedly, has a great advantage over the citizen. For this reason, modern procedural law has established a special rule of proof in disputes arising from mass-legal relations, such as the application of a measure of legal influence [15].

It is also indicated that as a basis for imposing the burden of proof on State bodies, a person administratively dependent on these bodies has no practical opportunity to provide evidence of the illegality of the actions of a state body or a private person. However, in some cases, if a State body has seized the property claimed as evidence in the case, a citizen may not have both legal and physical opportunity to present evidence.

Some scientists believe that the burden of proof imposed on state authorities is related to the need to protect the rights of citizens and organizations that occupy a subordinate position to a state body (official) in pre-trial relations. In particular, it is noted that in pre-trial relations, the inequality of subjects in cases of mass-legal relations cannot but affect the possibility of presenting evidence to them. For example, the Russian scientist Yu.According to Popova, a citizen who objects to decisions, actions of authorities, management, and their officials in civil (economic) procedural relations certainly does not have an equal opportunity to prove to these bodies the legal facts underlying the illegality of their actions[16]. At the same time, in cases involving the use of measures of influence, citizens and organizations have very little evidence. Moreover, often state bodies do not fully study all the circumstances of the case when making decisions on the application of measures of influence, and accordingly there will be no evidence other than these independently compiled documents.

The main reason for the distribution of the burden of proof in this form is the mass nature of the content of the application for the application of a measure of influence. Cases related to the application of legal measures of influence are considered not only for the consideration of a private (economic) case related to the protection of the rights and legitimate interests of a particular person, but also for judicial control over the activities of this state regulatory body of influence (application of a measure of influence)..

However, the Economic Procedural Code did not directly establish the distribution of the burden of proof, as indicated above, arguing that the burden of proof is distributed on a general basis in cases involving the application of legal measures, section 216 of the Economic Procedural Code. That is, according to the basic rule of proof set out in the first part of article 68 of the Commercial Procedural Code, the participant must prove the circumstances to which he refers in his claims and objections. Of course, provided that the applicant is a supervisory authority, the conditions for the application of a preventive measure must be proved by this body. Nevertheless, if it is necessary to collect evidence on important issues during the consideration of the case, it is necessary to solve the problem that has arisen by placing the burden of proof on the state body. In this case, it is justified that the court takes into account the mass legal nature of legal relations and imposes on the state body the obligation to prove this by virtue of the above principle.

Thus, the obligation (burden) of proving the circumstances underlying the application of legal measures of influence is legitimately assigned to the applicant – the state body. At the same time, the active position of the defendant, for example, the taxpayer, increases the chances of justice.

The most important thing is that the rigor in the proceedings of the economic court on the application of a lawsuit should be adjusted by the activities of the court, that is, taking into account the fact that they are not equal in mutual involvement of the parties from the very beginning, it is advisable for the court to determine, collect, study evidence on its own initiative. Zero in this category of cases, while the activities of the parties are based on their material and legitimate interests, the activities of the court are based on justice and legal personality.

The process of proof and the evidence base will differ depending on the type of judicial action. For example, when suspending operations on bank accounts, where it is necessary to create even greater tension and pay attention to the actions of the defendant and the collection of evidence, the application of financial sanctions with another measure of influence will not be a matter of dispute, the application of sanctions will become inevitable when the relevant law proves the state of violation.

Thus, it can be said that when considering cases involving the application of legal measures, the implementation of the argumentation principle has important characteristics. This is primarily due to the fact that during the trial, measures are taken to achieve real equality of the parties to the dispute, giving an opportunity to the weak, given the strength of the state body. Secondly, such exceptions are associated with the strengthening of the role of the court as checking and correcting the legality of actions and decisions of state bodies, that is, with the monitoring function.

If during the preparation of the case for the hearing it is established that the applicant has not provided the evidence necessary for the consideration of the case and the adoption of the decision, the court may request them on its own initiative. At the same time, the evidence presented at the verification stage, which is not disclosed by the parties involved in the case before the start of the court session, is subject to consideration by the court of first instance.

Thus, the court participates in the process of collecting and disclosing evidence as a fairly active participant in this process. In our opinion, this rule in no way restricts the rights of persons participating in the case to be adversarial in court proceedings, but only contributes to the implementation of the court's own functions within the framework of the proceedings on measures of legal influence.

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