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Court-initiated call for evidence in the Ukrainian economic process

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Abstract

The purpose of the article was to study the actual problems of obtaining evidence on the initiative of the court in the economic process and, at the same time, to substantiate the proposals for reforming the economic procedural legislation of Ukraine. In the research process were used methods of general and special, namely: historical, comparative legal, synergistic, structural systemic, analysis and synthesis, logical and generalization method. It has been shown that evidence is an important part of the judicial process. It is emphasized that the role of the court in ensuring a prompt and thorough consideration of the case cannot be passive. It is concluded that the court, while maintaining objectivity and impartiality, must assist the participants in the trial in exercising their rights, prevent any kind of abuse and take measures to fulfil its judicial duties, as a condition of possibility for the maintenance of the rule of law.

Keywords: evidentiary initiative; evidentiary claim; economic court; economic process; economic procedural law.

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Reclamo de pruebas por iniciativa del tribunal en el proceso económico de Ucrania

Resumen

El propósito del artículo fue estudiar los problemas reales de obtención de pruebas por iniciativa del tribunal en el proceso económico y, al mismo tiempo, fundamentar las propuestas para reformar la legislación procesal económica de Ucrania. En el proceso de investigación se utilizaron métodos de generales y especiales, a saber: histórico, comparativo jurídico, sinérgico, sistémico estructural, de análisis y síntesis, lógico y método de generalización. Se ha demostrado que la evidencia es una parte importante del proceso judicial. Se enfatiza que el papel de la corte para garantizar una consideración rápida y completa del caso no puede ser pasivo. Se concluye que el tribunal, manteniendo la objetividad e imparcialidad, debe asistir a los participantes en el juicio en el ejercicio de sus derechos, prevenir cualquier tipo de abuso y tomar medidas para cumplir con sus deberes judiciales, como condición de posibilidad para el mantenimiento del Estado de Derecho

Palabras clave: iniciativa de prueba; reclamo prueba; tribunal económico; proceso económico; legislación procesal económica.

Introduction

Judicial reforms have been recently carried out in many countries of the world. The reasons for reforming procedural legislation are both internal and external (international) factors. The processes of revising and updating national procedural legislations of various countries are conditioned by the need to bring them in line with modern global practices of regulating economic, political and other relations. The tendency that is also characteristic to Ukraine has been indicated.

The modernization of the procedural legislation of most European countries is aimed at ensuring the right to a fair trial and effective protection of violated rights and legitimate interests of business entities. “The burden of injustice falls too heavily on vulnerable groups, facing the threat of loss of jobs, livelihoods, housing, health and life, the hardest struggle to realize their rights and access to justice” (Teremetskyi *et. al.*, 2021: 3). At the same time, improving access to justice occurs by reducing court expenses, simplifying the rules of court proceedings, etc.

The redistribution of the responsibilities of the parties and the court in Ukraine has reflected a new balance of adversarial and dispositive judicial

principles. The court remains to have authorities to control over the organization of the case, namely: choosing the procedure for considering the case, establishing real deadlines for the execution of procedural actions, etc.

It is well-known that the largest number of comments from scholars and practitioners during the discussion of the draft of the current version of the Commercial Procedural Code of Ukraine (hereinafter referred to as the Commercial Code of Ukraine) were made on the norms regarding the use of means of proving and obtaining evidence, the role of the court in obtaining and verifying case evidence, etc.

Therefore, this article is focused on determining the role of the commercial court through the prism of authorities to demand evidence within the commercial proceedings and to ensure effective protection of the rights and legitimate interests of the participants in commercial legal relations. It is important because the provisions of the Commercial Procedural Code should reflect both private and public legal principles of judicial proceedings aimed at ensuring a balance of private and public interests in the commercial proceedings.

1. Literature review

The issue of determining the role of the court in the process of proving was the subject matter of scientific works by scholars from Ukraine and other countries. However, few scholars considered the expediency of granting the court the authorities to request evidence on its own initiative. This confirms the relevance of studying the role of the court within the procedure of demanding evidence in the commercial proceedings of Ukraine.

We note such scientific works that became the basis for this study. First of all, it refers to G.C. Lilly's work called Introduction to the Law of Evidence, which provides basic ideas about evidentiary law in the Anglo-American legal system (1996). The work called A Digest of the Law of Evidence by J.F. Stephen is also important. It has a great influence on the development and formation of modern evidentiary law in the USA (2015).

The rules of allocating authorities on proving are studied in O. Baulin's dissertation research "Burden of proving in civil cases" (2005). Teremetskyi and Petrovskyi (2021) revealed the legal nature of the concepts "special knowledge" and "special knowledge" is disclosed, defined approaches for determining the legal status of persons with special knowledge are indicated, identified regulatory and procedural obstacles and prerequisites for the participation of a specialist in a certain branch of knowledge as a subject of proof in the civil process are revealed.

Babenko (2007) in the dissertation research titled "Evidence in the commercial proceedings" studies the concept and legal status of the subjects of evidence in the commercial proceedings, namely by analyzing the legal status and rights of the court.

Biletskaya (2013), researching evidence in the commercial proceedings of Ukraine draws attention to the fact that the doctrine on evidence and proving in modern conditions has reached such a level of development that it is allocated to a separate sub-branch "Evidence Law", and proving is precisely the activity of the court and other participants in the proceedings.

Kalamaiko (2019), Melekh (2016), Izarova *et al.* (2018) focused their research on the institution of evidence and proving in foreign countries by paying attention to the role of the court in the proceedings.

Luspenik (2019), Selivon (2021), Demydova and Vasylchenko (2016), Ryzhenko and Rybas (2016), Dzhepa (2017) emphasize the need to leave the court's right to demand evidence while studying the role of the court in the process of proving.

2. Methodology of the study

The research is based on a complex of general scientific and special methods of scientific cognition. The following methods have been used: historical, comparative and legal, synergistic, systemic and structural, analysis and synthesis, logical and generalization methods. Thus, the historical method assisted to determine the stages of the development of the commercial procedural legislation in regard to the court's right to demand evidence on its own initiative. The comparative and legal method was used in researching the legal experience of other countries.

The synergistic method was used to combine the results of scientific research on the role of the court in the process of proving. The systemic and structural method made it possible to study the institution of the demand for evidence as a component of evidentiary law.

The methods of analysis and synthesis were used to analyze the essence of legal norms regulating the demand for evidence at the initiative of the court in Ukraine. The logical method and the method of generalization were used to analyze the data, the legislation of Ukraine and to form own conclusions.

3. Results and Discussion

3.1. Role of the court within judicial proving

An important prerequisite for making a fair and impartial court decision is to establish the factual circumstances of the case – a certain range of facts, which are the legal consequences according to the law. They are established with the help of proving, that is, a special procedural activity carried out by the participants of the case and the court.

The problem of proving occupies one of the central places in the science of commercial procedural law. Prominent scholars who are experts in the procedural issues have been involved in its solution for many centuries. The relevance of this problem is determined by the fact that any commercial case cannot be solved without proving.

The following key issues are important for court evidence:

1) who precisely carries out the activity on establishing legal facts, that is, how the burden of proving is distributed and between whom;
2) who should make efforts to establish the circumstances of the case and to which extent;
3) what is the court's participating extent in proving;
4) what should happen in case of passivity of proceedings participants and in case of insufficient evidence.

Demydova and Vasylchenko (2016) define the ultimate goal of the judiciary as achieving true information about circumstances to be proven and making a reasoned and fair decision on their basis. Thus, the quality of the court decision depends on the completeness and objectivity of studying the evidence.

The importance of proving in a case is emphasized by lawyers of the DLA Paper company in their research Dispute Resolution in the Middle East (2022). It is important to understand the rules related to evidence. Effective evidence management will help to win cases, and poor evidence management will help to lose it.

Evidence Law in the Anglo-American judicial system is allocated into a separate institution, which is interdisciplinary for all types of court proceedings – civil, criminal, arbitration. The rules of evidence dictate how and when facts can be proved or disproved in court. Evidence Law is the end product of century-long effort to make the judicial proceedings as fair, accurate and final as possible (Sklansky and Roth, 2020).

Evidence Law is a part of procedural law, which in certain cases decides: 1) which facts can and cannot be proven in a specific case; 2) what evidence must be provided regarding the fact that can be proven; 3) whom should present the evidence and what is the way of presenting the evidence (Stephen *et al.*, 2015).

The court decision must be based on the rule of law principles, be legal and justified. It is possible only in case of examining all the evidence in the case and establishing all the factual circumstances that are important for the correct solution of the case. But a party to the case does not always have the opportunity to independently provide necessary evidence due to circumstances beyond his / her control, therefore the institution of demanding evidence as a component of proving within commercial proceedings acquires special importance (Selivon and Nykytchenko, 2021).

The persons participating in the court proceedings present facts and arguments justifying their legal position in the case. On the basis of the evidence examined in the court, those persons make a conclusion about the stability of their legal position and continue to participate in the case or withdraw the claim, sign an agreement of lawsuit, plead no defence, etc.

The court analyzes the given facts and arguments of the parties with the help of procedural rules of evidence. As a result of case's consideration, the court makes a decision.

Therefore, during the proving process the persons participating in the case justify the circumstances of the subject of proving and its elements with the help of evidence. It leads to the emergence of new knowledge that is important for detecting the case. Every person participating in the process of proving within commercial proceedings fulfills the procedural duties assigned by law.

Almost all entities of economic and procedural legal relations are subjects of proving. The duties of the court do not include proving, but its task in considering and resolving the case is to ensure that all norms of evidence and proving are correctly applied. The court examines the evidence, evaluates it, makes a conclusion in the case, essentially participates in proving.

It is the parties in the case who are obliged to prove the circumstances of the case. Persons participating in the case perform this duty independently or through their representatives. And in cases established by the procedural law the help of the court is resorted in the form of a request to demand the necessary evidence (Lang, 2018).

Baulin (2005) notes that it is important who carries out the activity of establishing legal facts within court proving, unlike scientific and everyday knowledge, that is, how the burden of proving is distributed and between whom. The importance of the allocation of burdens of proving can be increased due to the strengthening of the role of the adversarial proceedings.

Previously the court had to be active in any case, could dominate and had the duty to fully and comprehensively consider the case. Modern commercial procedural legislation confidently departs from the assignment of investigative duties to the court, giving the main role in the proving process to the persons participating in the case.

Traditionally, two types of judicial proceedings are distinguished – investigative (inquisitorial, searching) and adversarial. The indicated types of proceedings primarily differ in the position of the court and the parties in the proceedings. The parties (not the court) in adversarial proceedings have the initiative during the preparation, hearing and review of the case. But none of the existing proceedings can be called adversarial or investigative in its pure form.

The burden of providing evidence and proving in adversarial proceedings rests with the parties to the dispute. It is on the contrary in the investigative proceedings, the court is responsible for collecting evidence.

There are two main concepts regarding the subjects of court proving in the scientific literature. Proponents of the first one believes that court proving is a way of learning the actual circumstances of the case. They understand court proving as the activity of proceedings subjects to establish the objective truth with the help of procedural means and methods specified by law, the presence or absence of facts necessary for dispute resolution between the parties (Treushnikov, 2004; Biletskaya, 2013; Vasylchenko, 2017; Selivon, 2021).

Proponents of the second approach understand proving as the activity, whose purpose is to convince the court of the truth of the facts under consideration (Osokyna, 2013; Melekh, 2016). Thus, they mean only the procedural activity of the parties, which consists of presenting evidence, refuting the evidence of the other party, filing motions, participating in the examination of evidence.

We believe that such a position is controversial, because some evidence cannot be obtained by the plaintiff without the help of the court. Therefore, both the active position of proceedings participants and the commercial court is important during proving.

The court is not always recognized as the subject of proving in procedural science. We talk about the scholars' position, who understand the court proving as the need to convince the opposite party and the court of their rightness. And since the court does not convince anyone according to such an approach, it is excluded from the subjects of evidentiary activity (Martysiuk, 2001; Butyrskyi, 2019).

Osokyna (2013) distinguishes between court proving and finding of fact and conclusion of law and notes that finding always precedes proving.

The subjects of proving, in her opinion, are persons participating in the case, their representatives, the prosecutor, state authorities and local self-government agencies.

She considers proving as the activity of those subjects related to the court's conviction of the existence or absence of certain facts. Until the court goes to the deliberation room, it is only the subject of finding. The court becomes the subject of proving as a logical mental activity only in the deliberation room after starting to draw up the final procedural document.

Babenko (2007) notes that the commercial court as a justice agency occupies a powerful position. Therefore, it has the right to demand, offer, oblige the participants of commercial proceedings to provide evidence necessary for the correct resolution of the dispute, that is, it exercises coercion.

Biletskaya (2013) states that proving is the activity of the court and other participants of proceedings, whose purpose is to establish and fully clarify all the valid circumstances of the case, which are specified (individualized) depending on the subject matter of the dispute, the parties, as well as those legal relations that take place between the parties in a particular case.

Kalamaiko (2019) refers to the experience of foreign countries and notifies that the activity of the court in the procedural science and legislation in some countries is considered in terms of the so-called "case management", whose one of the elements is the court's authorities within evidentiary activities. The court in Great Britain, who always was an example of classic adversarial model, plays a passive role; the court has certain manifestations of "mandatory activity" such as sending the parties a form with the allocation questionnaire.

The judge in German civil proceedings must administer the proceedings and focus on the decisive issues. Courts also have the right to make requests (for example, regarding an expert's opinion), as well as to study evidence in the case by conducting a video conference.

Therefore, the specifics of implementing the adversarial principle depend on one or another procedural system. For example, a judge in the system of continental law is responsible for collecting evidence, forming a legal position in a case.

A trial in the continental legal system usually consists of a series of short court hearings to collect evidence, which must be presented during the court hearing as the final stage of the analysis and decision-making. In contrast, a trial in common law countries typically has a preliminary or pre-trial stage, where the evidence in the case is sequentially presented (Komarov, 2011).

We note that the role of the presiding judge is important in the Anglo-American legal system, where the burden of proving is responsibility of the

parties according to the adversarial principle. Court lawyers have broad discretion to conduct their cases in their own way, but there are significant limitations imposed by the trial judge. Evidence Law gives the trial judge both great power and broad authorities (Sklansky and Roth, 2020).

A. Shtafan (2015) claims that the court: a) does not take a passive position, allowing itself to be convinced of the existence of certain circumstances; b) is not only an observer over the compliance with the legal norms by the participants; c) facilitates to the collection of evidence in the case, forms the limits of proving, and sometimes the burden of proving. Therefore, the indicated activity belongs to proving. Thus, the court is a full-fledged subject of proving, acting in the interests of justice.

Treushnikov (2004) emphasizes that the implementation of the idea of passive behaviour of the court in the process of proving can lead to difficulties in the practice of consideration and resolution of specific cases. Court proving according to the scholar is a logical and practical activity not only of the persons participating in the case, but also of the court.

The commercial court takes part in establishing the factual circumstances of the case and has the opportunity to directly influence the activities of the persons participating in the case. That is, the commercial court gets to know the circumstances and evidence at all stages of the case by participating in the formation of the subject matter of proving in the case, in the research and evaluation of the evidence in the case, and in exceptional cases – in the collection of evidence in the case.

3.2. Changes in the court's role in reforming commercial procedural legislation

The current duty of the Ukrainian court to collect evidence on its own initiative to objectively clarify all circumstances of the case within commercial proceedongs has been replaced by the function of the court to assist the persons participating in the case in obtaining the evidence necessary to resolve the case on its merits.

Butyrskyi (2019), analyzing the current edition of Part 5 of the Art. 13 of the Civil Procedural Code of Ukraine, concludes that the role of the court has significantly changed after the adoption of new procedural codes. Thus, the court maintaining objectivity and impartiality:

1. manages the course of judicial proceedings;
2. facilitates to the settlement of the dispute by reaching an agreement by the parties;
3. explains, if necessary, to the participants in the court proceedings their procedural rights and obligations, the consequences of taking or not taking procedural actions;

4. assists the participants of court proceedings in exercising their rights provided by the Commercial Procedural Code of Ukraine;
5. prevents the abuse of their rights by the participants of court proceedings and takes measures to ensure that they fulfil their obligations.

Such a procedural position of the court significantly distinguishes it from the one it held under the previous edition of the Commercial Procedural Code of Ukraine. Previously, the commercial court had to create the necessary conditions for the parties and other persons involved in the case to establish the factual circumstances of the case and the correct application of legislation. The commercial court made its decisions based on the results of the evaluation of the evidence submitted by the parties, other participants in the proceedings and which were requested by the court.

The adversarial principle between the parties and their freedom in providing the court with their evidence and in proving their persuasiveness is enshrined in the Art. 129 of the Constitution of Ukraine. The Article 13 of the Commercial Procedural Code of Ukraine specifies the content of this principle within commercial proceedings. Korotenko (2006) defines the adversarial principle as the competition of parties in a case, when the actions of one person participating in the case effectively limit the ability of others to influence the outcome of the court proceedings individually, if there is active role of the court, which is empowered to administer and manage the proceedings.

The adversarial model of civil proceedings is the construction of the procedure of considering and resolving cases, when legally interested persons carry out proving activities in support of their claims or objections at their own discretion with qualified legal assistance. Preparation of the case for consideration is the responsibility of the parties and their representatives, which involves questioning witnesses, applying to expert institutions, etc. The court carries out procedural control while maintaining impartiality.

The principle of adversariality of the parties implies a high level of legal culture, legal awareness and conscientiousness of the participants of court proceedings. Each party must prove the circumstances it refers to as the basis of its claims or objections (the Art. 74 of the Commercial Procedural Code of Ukraine).

Part 4 of the Art. 74 of the Commercial Procedural Code of Ukraine prohibits the court from collecting evidence related to the subject matter of the dispute on its own initiative, except for the demand of evidence by the court in case if it has doubts about the good faith of exercising the procedural rights by the participants of the case or the fulfilment of obligations regarding evidence.

According to E. Martysiuk (2001), the guarantees for implementing the adversarial principle are: 1) the refusal of commercial courts to initiate the collection of evidence; 2) establishing the absolute truth; 3) increasing the degree of responsibility of persons participating in the case, under the threat of a decision unfavourable to them; 4) increasing the general legal awareness for the subjects of legal relations, which corresponds to the tasks of commercial justice system. Such scholar's position is controversial, because the main feature of the adversarial system is that the judge is not obliged to establish the truth in the case.

The court was considered as an active participant in commercial proceedings by collecting evidence in the case on its own initiative before the adversarial principle was established in the procedural legislation of Ukraine. However, there are situations in practice, when the adversarial principle of the parties cannot be followed and the court must have authorities to take active actions. This may be caused by the low level of training of the participants of the court hearing, the tactics chosen by the party in the case, etc.

Vedeneev (2001) singles out two groups of judicial powers, if we consider the powers of the court in proving from the point of view of their impact on the activities of the plaintiff and the defendant in proving:

1) the court takes part in establishing the factual circumstances of the case and has the opportunity to directly influence on the willful activity of persons participating in the case on proving. For example, in the form of determining the subject matter of proving in the case or while checking the relativity, admissibility, reliability and sufficiency of the evidence provided in the case;

2) the current procedural codes also enshrine the powers of the court, whose implementation creates the necessary conditions (preconditions) for persons participating in the case to carry out evidentiary activities in a specific case in accordance with procedural principles.

The mentioned groups of court powers are called in the literature as "administrative powers" and "organizational powers".

The organizational powers of the commercial court enshrined in the current commercial procedural legislation do not directly affect the volitional activity of persons participating in the case on proving, but only create the necessary conditions (preconditions) for a more complete realization of their procedural rights in the case. On this basis one can conclude that the organizational powers of the court are consistent with the adversarial principle and contribute to its implementation within commercial litigation.

The court's demand for evidence belongs to administrative powers, and this procedure must be strictly regulated in the procedural norms in order to develop and strengthen adversarial system in commercial proceedings, to increase the authority of the court and impossibility to make adversarial system to be a fiction.

Melekh (2016), having studied the institution of evidence and proving in foreign countries, concluded that the court in the procedural legislation of a number of foreign countries has powers on proving in the case, which at first glance do not belong to the judicial model built on the adversarial principle.

At the same time, the scholar points out the impracticality of copying the powers of the court on proving in the case based on the legislation of foreign countries. According to her opinion, the active use of such powers by the court in Ukrainian legislation can lead to an influence on the parties' procedural activity on proving, by imposing them own vision and understanding of the essence of a specific commercial dispute.

There is still no unified approach to the issue of judicial control over the process in the European Union. The main tendencies in civil proceedings reforms among the EU member states are to ensure the effectiveness of the process by providing judges with an appropriate level of judicial control. At the same time, there is still insufficient public trust in judges and the judicial system in general in post-socialist countries (Izarova *et al*., 2018).

Provisions of the Art. 81 of the Civil Procedural Code reflect the private law principles of adversarial civil proceedings, according to which the burden of proving rests entirely on the parties (Luspenik, 2019). Therefore, the stated duty on proving is characterized by the specificity and arises when a person exercises his / her right to judicial protection. At the same time, a person has the right to independently choose the range of evidence that he / she refers to and submits to the court, based on the procedural interest and position in the case.

However, this right of the parties has its limits. For example, the parties must not abuse their procedural rights (we mean the use of procedural rights in the field of proving contrary to their purpose, unscrupulous practice that violates the interests of other persons, etc.).

The current edition of the Art. 74 of the Commercial Procedural Code of Ukraine is criticized by scholars and practitioners in view of the fact that it deprives the court of the right to demand independently insufficient evidence submitted by the parties.

One should agree with Vatamaniuk (2011), who notes that the legislator significantly influenced the comprehensiveness and fairness of the court proceedings by determining in the new edition of the Commercial

Procedural Code of Ukraine that the burden of proving rests exclusively on the parties, and the commercial court on its own initiative is deprived of the right to demand evidence from enterprises and organizations regardless of their participation in the case, if submitted evidence is insufficient.

Hence, considering the case on its merits and understanding that the rights of one party have been violated by the illegal actions of the other party, the court has currently no opportunity to establish the truth and justice in the resolution of this dispute in case, in particular, of improper legal support of the interests of the party by its representatives, but as an observer must analyze the evidence presented and resolve the dispute purely on its basis.

Demydova and Vasylchenko (2016) note that the right to demand additional evidence is not a manifestation of judicial interest in the outcome of the dispute, but an additional mean of ensuring the completeness of evidence examination and establishing the valid relations of the parties. The court making a procedural decision to demand this or that evidence cannot be aware in advance about the results of such a procedural action. At the same time, dubious circumstances should in no case serve as the basis for making a decision. The adversarial system of the parties in its absolute meaning is an ideal that should be strived for, but should not be formalized too much.

Ryzhenko and Rybas (2016) suggest to supplement the Commercial Procedural Code of Ukraine with a norm on the court's right to demand evidence on its own initiative in cases defined by law.

According to Yu. Dzhepa (2017), limiting the powers of the court to collect evidence is a tendency that can lead to the fact that the court will be a "hostage" of the parties and other participants in commercial proceedings, especially in cases between related business entities, which due to the relevant norm of procedural law, will be able to tamper the court, which undermines its authority and mitigates the function of an independent arbitrator.

Vasylchenko (2017) considers it positive, scientifically based and practically justified the establishment in Part 4 of the Art. 74 of the Commercial Procedural Code of Ukraine an exception to the general rule regarding the court's right to independently demand evidence, when it has doubts about the conscientious exercise of the procedural rights by the participants of the case or the fulfilment of their obligations regarding evidence.

Such a court right is undoubtedly necessary to ensure effective protection of violated, unrecognized or appealed rights and legitimate interests of individuals and legal entities or the state. However, the judges in the relevant rulings on the demand for evidence on the basis of Part 4 of

the Art. 74 of the Commercial Procedural Code of Ukraine do not always indicate the reasons for such a demand.

The court in accordance with Part 4 of the Art. 74 of the Commercial Procedural Code of Ukraine has the right to collect evidence in case if it has doubts about the conscientious exercise by the participants of the case of their procedural rights or the fulfillment of their obligations regarding evidence. For example, in case if the court comes to the conclusion that the claim is of artificial nature, and the commercial litigation, contrary to the principle of good faith in exercising procedural rights, is not used for its intended purpose, it has the right to demand all the necessary evidence, in its opinion.

Provisions of the Art. 74 of the Commercial Procedural Code of Ukraine reflect the public and legal principles of commercial litigation and are aimed at ensuring the good faith of the procedural behavior of the participants in the case in terms of the adversarial model of the judiciary, based on the principle of proportionality, which is designed to ensure the balance of private and public interests during the administration of justice in commercial cases.

In addition to the mentioned Part 4 of the Art. 74 of the Civil Procedural Code of Ukraine, one can find their other cases when the court can collect evidence on its own initiative (Part 7 of the Art. 82, Part 6 of the Art. 91, Part 5 of the Art. 96, the Art. 99 of the Civil Procedural Code of Ukraine, etc.).

Luspenik (2019) notes that the provisions on the possibility of collecting evidence by the court on its own initiative should be justified not only through the prism of competitiveness, but also taking into account the principle of proportionality in terms of the tasks and purpose of the judicial proceedings.

Conclusion

Having analyzed the current legislation and caselaw, we should point out the need to improve certain provisions of evidentiary law and the theory of evidence. We believe that the role of the court in ensuring a quick and comprehensive consideration of the case cannot be passive. First of all, it is related to ensuring the balance of private and public interests during the administration of justice within commercial disputes.

Therefore, the establishment of an exception to the general rule regarding the court's right to independently demand evidence, when it has doubts about the conscientious exercising the procedural rights by the participants of the case or fulfilling their duties, is precisely the tool that will ensure the conscientious procedural behavior of the participants of the

case, as well as to prevent abuse by the parties of their procedural rights or manipulation of the court, aimed at undermining its authority and leveling the function of an independent arbitrator.

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