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Historical Aspects of the Institute of Evidence and Proof in Civil Proceedings in Latvia (1918–1940)

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The institute of evidence is an integral part of achieving the objectives of civil proceedings, and only through it can effective civil protection be ensured in the courts. Within the framework of this paper, the concept and essence of evidence, as well as the general rules of proof in Latvia in the period from 1918 to 1940, are studied.
Keywords: theory of evidence, evidence and proof, Latvian law, civil proceedings, First Independence of Latvia.

Įrodymų ir įrodinėjimo instituto Latvijos civiliniame procese istoriniai aspektai (1918–1940)

Įrodymų ir įrodinėjimo institutas yra neatsiejama civilinio proceso tikslų įgyvendinimo dalis ir tik juo remiantis galima užtikrinti veiksmingą asmens teisių teisminę apsaugą. Straipsnyje nagrinėjama įrodymų samprata ir esmė bei bendrosios įrodinėjimo taisyklės Latvijoje laikotarpiu nuo 1918 iki 1940 metų.
Pagrindiniai žodžiai: įrodymų teorija, įrodymai ir įrodinėjimo institutas, Latvijos teisė, civilinis procesas, pirmoji Latvijos nepriklausomybė.

Introduction

Evidence theory, as one of the basic elements of civil procedure science and practice, is considered to be a constantly relevant issue. A successful realization of civil law relations and the application of civil law norms is conditional on a successful and efficient implementation of the institute of evidence. It is not possible to establish the factual circumstances of a civil case without evidence, but the court's judgment must be based on the circumstances established by the evidence in the case. These truths are not just an achievement of modern times. It appeared and developed much earlier, but it began to gain its full strength, including in regulatory enactments, only in the late 19th century and early 20th century, up to modern and postmodern times, when the scientific developments of the concept of proof in the modern sense began. In the view of the above, it is important to study the historical development of this

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important institute, thus contributing to the development and improvement of modern legal thought. The aim of this paper is to analyze the regulation of general rules of evidence and proof in Latvia in the period from 1918 to 1940. Legal literature, regulatory enactments in force in Latvia at the relevant historical stage, as well as court practice have been used as research material. The author, analyzing the regulation of civil procedure on evidence in the period from 1918 to 1940, based her research on the Regulations of Civil Procedure of 1932 and the Law of Civil Procedure of 1938. The Civil Procedure Regulations of the Russian Empire of 1864, which were in force in the territory of Latvia until the adoption of the Civil Procedure Regulations of 1932, were left out of the research. The above is justified by the fact that the Regulations of Civil Procedure of 1932, as well as the Law of Civil Procedure of 1938, have actually taken over the norms of the Regulations of Civil Procedure of the Russian Empire of 1864. The following scientific research methods are used in the article: a comparative method to study the similarities and differences in regulatory enactments in order to establish the development, continuity, or absence of legal norms. An analytical method has been used to study the essence of certain concepts. The aim of the legislator in adopting regulatory enactments has been explored with the help of the teleological method. Due to the width of the research topic and the limited scope of this paper, the author studies only the concept of evidence and the general rules of proof.

1. The Concept of Evidence

The period studied in this paper is initially characterized by the gradual introduction of a single regulation and the application of several autonomous sources of law. Due to historical circumstances, before the proclamation of the Republic of Latvia on November 18, 1918, the territorial aspect regarding the application of civil procedural law sources was as follows: in the territory of Latgale, the districts of Daugavpils, Rēzekne, and Ludza were divided into the Vitebsk province of the Russian Empire (Kalniņš et al., 1980, p. 56), where the laws and regulations of the Russian Empire applied, including the Civil Procedure Regulations of the Russian Empire of 1864 [Уставъ Гражданскаго Судопроизводства. Сводъ Законовъ Россійской имперіи, т. 16], which came into force with the reform of the courts of the Russian Empire in 1864. But in the rest of the territory, which were the autonomous provinces of Vidzeme and Kurzeme, local regulations were different. It was only since 1889 that the Civil Procedure Regulations of the Russian Empire of 1864 came into force in the provinces of Vidzeme and Kurzeme (*Latvijas tiesību vesture (1914–2000),* 2000, p. 32), thus creating a unified legal framework for civil procedure.

After the proclamation of the State of Latvia on November 18, 1918, two normative acts were important for the development of civil procedural rights. The Provisional Regulations "On Latvian Courts and Judicial Procedure," adopted by the Latvian People's Council on December 6, 1918, are unequivocally recognized as an important legal act that ensured a certain temporary stage in the procedural field of Latvian law, including the development of civil procedure law. This regulatory enactment determined the foundations of the newly proclaimed court system and procedural law of the Republic of Latvia (*Nolikums "Par Latvijas tiesām un tiesāšanas kārtību", 1919*). This regulatory enactment determined the foundations of the newly proclaimed court system and procedural law of the Republic of Latvia (Bukovskis, 1920, p. 90–96). However, the Latvian legislator had the opportunity to focus on the aspects of a narrow civil procedural legal regulation only at the end of 1919, when on December 5, 1919, the Latvian People's Council adopted the Law "On Maintaining the Earlier Russia Law in Latvia" (*Likums „Par agrāko Krievijas likumu spēkā atstāšanu Latvijā", 1919*), which provided that all earlier laws of the Russian Empire, which existed within the borders of Latvia until

October 24, 1917,[1] shall be considered valid after November 18, 1918,[2] to the extent that they have not been repealed by new laws, and do not oppose the Latvian state system and the platform of the People's Council. Based on this choice of the legislator, the Regulations of the Civil Procedure of the Russian Empire of 1864 continued to operate in the territory of the Republic of Latvia after the proclamation of the State of Latvia, maintaining the principle of continuity of law (*Latvijas tiesību vēsture (1914–2000),* 2000, p. 177; Bukovskis, 1933, p. 3–4).

Respectively, until the development of the new legal framework, the Civil Procedure Regulations of the Russian Empire of 1864 were preserved and applied. This exhibition of new legal frameworks dragged on, based, among other things, on various political and historical events. In general, during the study period, two sources of law were newly developed and adopted, which regulated the rules on evidence and proof in civil cases in the Republic of Latvia until 1940: the 1932 Civil Procedure Regulations (*Civilprocesa nolikums,* 1932) and the 1938 Civil Procedure Law (*Civilprocesa likums,* 1938). The latter remained in force even between July, 1940 and November, 1940 (Lazdiņš, 2007, p. 62–72).

In analyzing the understanding of the concept of evidence in this period, it should be noted that neither the 1932 Civil Procedure Regulations nor the 1938 Civil Procedure Law provide a definition of evidence. In fact, without defining evidence in section 102 of the Civil Procedure Act 1932 (*Civilprocesa likumi,* 1923) and section 454 of the Civil Procedure Act 1938 (*Civilprocesa likums ar paskaidrojumiem, no ....*, 1939, p. 167), it merely requires the plaintiff to prove their claim and the defendant to prove their allegations. From the scientific sources of that time, the following views can be found in the theory of Latvian civil procedure: one may come across the opinion that the methods and means used by the litigant to convince the court and which can be verified in advance are called evidence (*Civilprocesa likums ar paskaidrojumiem, no ....*, 1939, p. 147); at the same time, it may be encountered that the evidence is the means by which the parties convince the court of the existence or absence of certain circumstances (Lejiņs, 1940, p. 70); or it has been established that the purpose of the proof is to establish the fact, or the factual circumstances, on the basis of which the court must make its judgment and each party must prove the factual circumstances which it alleges (Lejiņs, 1940, p. 70).

Looking at the case law materials, it can be concluded that such a doctrinal approach was supported and accepted in practical jurisprudence. In the Judgment of the Latvian Senate in Case Nr. 1619 of 1935, evidence is defined as *the methods and means used by a litigant to persuade a court and which must be verified in advance (Latvijas Senāta Civilā Kasācijas departamenta ...* 1936, p. 344).

It follows from the foregoing that the concept of proof was to be understood and that the concept of proof tool was therefore confused. In modern theory of proof, these concepts are strictly separated, but it should be noted that the scientific development of the concept of proof in the modern sense only began in the late 19th and early 20th centuries. The opinion of Latvian legal scholars on the essence and understanding of evidence in the period 1918–1940 was largely influenced by the chosen principle of continuity (*Latvijas tiesību vēsture (1914–2000).* 2000, p. 209), which for a long time maintained the Civil Procedure Regulations of the Russian Empire of 1864 and the theoretical ideas underlying its establishment and insights. For example, K. Malyshev (К. Малышев), a well-known proceduralist of the time, points out that it is necessary to distinguish between the understanding of the concept of evidence in a logical and technical sense, but sees purpose in using court evidence in persuasion, that is, achieving a certain degree of certainty. "In a broader sense, evidence or argument is anything that

[1] October, 24, 1917 – The "October revolution," as a result of which the Bolsheviks seized political power in Russia.

[2] The date of the proclamation of Latvia's independence.

convinces us of the truth or untruth of a fact or opinion. Such an explanation of the concept of proof belongs to the science of logic. From the technical point of view of our industry, judicial evidence is the legal basis for convincing a court of the existence or non-existence of disputed legal facts" (Malyshev, 1876, p. 267). Thus, K. Malishev considered that the evidence was a legal basis for persuasion. Another civil procedure specialist, V. Spasovich (В. Спасович), also emphasized in his work that the task of evidence is to persuade: "When we recognize certain things / phenomena, when we gain a certain conviction by observing the connection and correlation of objects, then the news (information) that has created this conviction in us is called evidence" (Spasovich, 1861, p. 7–8). A similar position can be found with other authors: a fact reported by a party in the court is reproduced at the hearing, using external means submitted by the parties (Golmsten, 1913, p. 204) and defining evidence as the tool, by which evidence is taken (Vaskovskiy, 1914, p. 321).

It is important to emphasize that according to the logic that mainly examines the structure of evidence, sources of information or news and their form are irrelevant "because the proof of a particular opinion is the syllabic inference of that opinion from other opinions found to be plausible and necessary […] from definitions and axioms*"* (Zigvart, 1908, (2008) p. 239). On the other hand, in the process of proof, which has always been and remains the most formalized procedural activity in Latvian civil procedural law, an important role is given to the form of providing information. The essence of the form of civil procedure is defined as a detailed and strict regulation of the procedural behavior of the court and other participants in the proceedings. In this connection, the earlier scientific sources, which until 1918 formed the theoretical basis of the Civil Procedure Regulations of the Russian Empire of 1864, emphasized the need to distinguish two elements in the concept of court evidence – content and form: information or news on the existence of and the source who obtained this information or news. "The existence of a fact is confirmed by information / news obtained or submitted about this fact. Therefore, this information can be called the basis of evidence, but the source from which the information is obtained can be called the means of proof[3]: according to this explanation, the content of the document is a means of proof, but the information contained in the document about the existence of a fact is the basis of the evidence. Following this principle, a site visit is a means of proof, but the information obtained during the site visit is a basis for proof" (Nefedjev, 1909, p. 173).

It can be concluded that in the period from 1918 to 1940, civil procedural norms of Latvian law did not include the separation and definitions of evidence and means of proof. Likewise, these aspects were not studied or analyzed in detail in the legal literature. By assessing the non-distinction between the concepts of proof and the means of proof, as well as analyzing the expressed opinions, it can be concluded that proof itself, which is specifically reflected in the works of V. Bukovskis (Bukovskis, 1933, p. 352) and P. Lejins (Lejiņš, 1940, p. 70), is also considered to be the means of proof. As a result, contrary to modern understanding, the witness himself and the fact that they are giving evidence were considered as evidence, not the information contained in / obtained from that testimony; or the document itself is evidence rather than information derived from its contents. So, in fact, the evidence was considered as a means. In analyzing V. Bukovsky's above definition of evidence as a means by which the parties convince the court of the existence or absence of certain circumstances, however, it should be emphasized that in forming an understanding of the means of proof, the function of the means of proof is indicated – with the help of it, the parties convince the court of the existence or absence of certain circumstances. This thesis is generally in line with the modern understanding.

[3] This historical period still uses old terminology, which is not "means of evidence," but "means of proof."

It should also be noted that the failure to distinguish between the concepts of evidence and means of proof also affected the notion of the division of evidence. The following breakdown of evidence can be found in the most scientific findings of the research period:

1) internal means which depart from the parties themselves and testify in the testimony of one of the parties to a disputed circumstance;
2) external means that the court may receive:
   (a) either by directly and personally perceiving certain creatures and events of the external world by means of the senses – sight, hearing, taste, and smell;
   (b) either with third parties: witnesses, eyewitnesses, bystanders and officials;
3) directly, with which a certain fact is directly ascertained;
4) indirectly, by which certain minor circumstances are clarified, from which the court, either by way of comparison or by drawing certain conclusions, may come to the conclusion that the fact to be proved in such a way has occurred (Bukovskis, 1933, p. 353).

By analyzing the issue of the substantive aspect of evidence, however, it is acknowledged that the evidence meant any factual information on the basis of which the competent authorities determine the existence or absence of legal facts and circumstances relevant to the proper resolution of a legal matter. It should be noted that such a precise definition is not found in the scientific source of the relevant period, although such perception can be deduced from court rulings. For example, the judgment of the Department of Civil Cassation of the Senate of 1927 in case Nr. 387 (*Latvijas Senāta Civilā kasācijas departamenta …*, 1927, p. 99) provides that a simple allegation by a party that a particular fact or circumstance has not been proved does not in itself oblige the other party to prove it, unless the party expressly disputes that fact or circumstance. In its turn, in the 1920 judgment of the Civil Cassation Department of the Senate in case Nr. 81 (*Latvijas Senāta Civilā kasācijas departamenta …*, 1927, p. 127), the Senate acknowledges that the applicant is not obliged to comment on the defendant's objections, that he disputes the applicant's evidence, and that silence cannot be regarded as an admission of an objection which relieves the defendant of proving the allegation.

2. General Rules of Evidence

There is no doubt that the concept of evidence is closely linked to proof. The primary task of the court in civil proceedings is to protect the rights and interests protected by law. Therefore, in order to resolve disputes in a legal relationship, the court must find out what legally significant facts actually took place. Namely, in civil proceedings, as in any other legal proceedings, a dispute is resolved regarding the truth of the factual circumstances of the case. Such clarification of facts and circumstances shall be ensured by means of evidence. Until the civil dispute is resolved, the court and the parties will continue to take the necessary evidence to prove the facts of the case.

It should be noted that the definition of the concept of proof is not provided in the legal norms of civil procedure, which were in force in the period from 1918 to 1940. Looking at the opinions expressed by scientists, it can be concluded that they differ in nuances while maintaining a uniform structural form. For example, V. Bukovskis expressed his opinion, referring to the action of the litigants as evidence, aimed at proving the truth of their statements and explanations before a duly competent court (Bukovskis, 1933, p. 333). On the other hand, B. Karcevs, considering that in civil proceedings the active action of the parties before the court is considered as evidence, indicated that proof in the true sense refers to the action by which a party brings legally valid grounds to convince a judge of an allegation that should not be taken for granted (Karcevs, 1939, p. 2). Although these views expressed in the legal

literature between 1918 and 1940 are not considered to be incorrect, they are very different from the modern theoretical concept, where proof in civil proceedings is generally understood to convince the parties of the existence or non-existence of the facts, on which the parties base their claims or objections relating to their validity (Līcis, 2003, p. 66). In analyzing the opinions of scientists expressed between 1918 and 1940 on the definition of evidence and its understanding, the most important element in these opinions is the conviction of the court about the truthfulness of the party's statements, objections, and explanations. However, it must be acknowledged that the statements, objections, and explanations must contain legal facts which are relevant to the proceedings and which must therefore be assessed by the court. Consequently, it must be concluded that, during the period in question, the objective of proof was also linked to the need to establish the factual circumstances on the basis of which the court should also give judgment in the case, applying the relevant provisions. However, the purpose of that proof was not absolute. Thus, proof of this can be found in the understanding of the principle of competition in the field of civil procedure and the independent right of the court to prove.

There is no doubt that during the interwar period, Latvian civil proceedings were based on the principle of competition, which we will be able to ascertain further by examining the legal regulation of the obligation to deliver. Yet the principle of competition, that is the principle forming the sector, is also indicated by the fact that the Regulations of Civil Procedure of 1932, as well as the Law of Civil Procedure of 1938, do not indicate the right of a court to intervene in the process of taking evidence independently. Section 457 of the Civil Procedure Regulations, 1932, and the Civil Procedure Act, 1938, which stipulates that a court shall not in any way collect evidence or information itself but shall base its information solely on evidence provided by litigants, in fact include both the competition principle and the dispositive principle. Confirmation of the lack of power of the court in gathering evidence can also be found in court practice: in the judgment of the Department of Civil Cassation of the Senate of 1928 in case Nr. 6 (*Latvijas Senāta Civilā kasācijas departamenta ...*, 1928, p. 111) The Senate points out that if the Trial Chamber itself has ruled that there is a need in the competition between the parties to adduce evidence for an important finding without which the case cannot be properly decided, it is required to notify the parties of such circumstances and give them a period in which to establish that fact and to submit evidence. A similar example is found in the judgment of the Department of Civil Cassation of the Senate of 1932 in case Nr. 1196 (*Latvijas Senāta Civilā kasācijas departamenta ...*1932, p. 36); the Senate points out that a court cannot leave an important circumstance important to a case, but it is obliged to notify the party thereof and give it a term to clarify this circumstance.

V. Bukovskis also points out that the role of the court in obtaining evidence, that in trying to achieve the possible material justice, the court does not collect the evidence itself, but leaves this obligation to the parties (*judex secundum allegata et probata apartibus judicare debet*). The court only receives the evidence submitted and presented by the parties, examines it, compares it, and assesses its probative value. Once a party has proved certain circumstances and the court has recognized them as certain, it applies the relevant rules to them (Bukovskis, 1933, p. 332). At the same time, however, V. Bukovskis points out that the principle of adversity can allow injustice to defeat justice, cunning and skill to defeat justice, and wealth to defeat poverty (Bukovskis, 1933, p. 236–237). The author based this thesis on the fact that a good lawyer invited by a party can easily defeat a poor opponent, who does not know the rights and is forced to conduct the case in person, even without knowing the formal procedure for conducting the case. In the opinion of V. Bukovskis, this negative feature of the adversarial principle cannot be offset by all its other good features taken together. In light of these findings, as well as the fact that, at the material time, heavy tools to reduce the negative effects of the competition principle simply did not yet exist in democratic system (provision of qualified legal aid to the parties, including

those paid for by the state; extension of the court's duty to establish the facts of the case, etc.), it can be concluded that the abovementioned purpose of proof, despite its proximity to modern democratic values, was more formal in nature.

Continuing with the question of the general rules of evidence, it should be noted that the burden of proof is also linked to the implementation of the competition principle. By analyzing the norms of civil procedure in the period from 1918 to 1940, it can be concluded that the issue of the burden of proof (*onus probandi*) was rather poorly regulated in them. The Civil Procedure Regulations of 1932 and the Civil Procedure Act of 1938 contained only a general provision requiring the plaintiff to prove the grounds of their claims and the defendant to validate their objections. On the other hand, a large part of the legal norms regulating the distribution of the burden of proof among the litigants was included in the substantive legal norms. According to scientific findings, this feature – the large number of procedural articles on *onus probandi* in substantive law – is explained by the fact that at the time of codification of the Baltic Local Civil Laws, the former Baltic provinces did not yet have a codified procedural law; therefore, the introduction of such procedural norms into substantive law proved perfectly natural (Bukovskis, 1933, p. 347). In fact, neither the Rules of Civil Procedure of 1932 nor the Law of Civil Procedure of 1938 even regulate which of the parties may submit evidence. Under modern procedural law, evidence is submitted by the parties and other parties to the proceedings, that is to say, any party to the proceedings who enjoys the status of a party to the proceedings. However, due to the fact that the respective position was not determined in the period of the civil procedural norm from 1918 to 1940, the right of a third party to submit evidence in the case was especially assessed. It was argued that the third party always sided with the plaintiff or the defendant in the case and formed one party with it. Prof. V. Bukovskis expressed the opinion that in all cases, it is always a dispute between two parties; and even when a third party intervenes with independent claims, in fact, in this case too, there are two contentious relationships linked in one case for the sake of convenience and speed (Bukovskis, 1933, p. 256).

In describing the division of the burden of proof, V. Bukovskis indicated that the plaintiff is trying to change the situation that existed at the time of bringing the action. In their action, the applicant claims that the current situation is abnormal as a result of the defendant's unlawful conduct and that it should be reversed in the direction indicated by the applicant. It is the plaintiff's duty to convince the court that the current situation is abnormal and therefore needs to be changed (Bukovskis, 1933, p. 340). It follows that, according to the scientific findings made between 1918 and 1940, the burden of proof lies first with the applicant. As soon as the plaintiff has convinced the court that the former state of the claim is abnormal, inconsistent with the law and, therefore, needs to be amended, the burden of proof shifts to the defendant – to convince the court that the plaintiff is wrong by proving the contrary and proving otherwise. Such an approach to the allocation of the burden of proof was unequivocally based on the Civil Procedure Regulations 1932 and Section 454 of the Civil Procedure Act 1938, according to which the plaintiff must prove their claim and the defendant their objections against the claim, and Section 829, according to which the court will oblige the claimant in absentia to prove all his claims (Bukovskis, 1933, p. 341).

The claimant must prove the grounds of his claims. It is for the defendant to prove that his opposition is well-founded, so that the burden of proof applies equally to the plaintiff and the defendant. At the same time, that provision contains the general principle that, in bringing an action, the applicant must first prove the grounds of their action and only then must the defendant prove the grounds of their opposition. The burden of proof was regulated identically in Section 454 of the Civil Procedure Regulations 1932 and the Civil Procedure Act 1938.

There are several exceptions to the burden of proof in the legal literature, but not all of them can be found in the legal norms governing civil proceedings, which were in force from 1918 to 1940. The Rules of Civil Procedure of 1932 and the Law of Civil Procedure of 1938 contain several exceptions to the burden of proof, but they are not summarized in a single legal provision or section. It is possible to list the following aspects (Bukovskis, 1933, p. 333–337) from which the defendant is relieved of the burden of proof:

1. *It is not necessary to prove facts that are generally known, but the question of recognizing a fact as well-known is decided by a court*. The Senate also points this out in the 1924 judgment of the Civil Cassation Department in case Nr. 460 (*Latvijas Senāta Civilā kasācijas departamenta ...*1924, p. 98), where the Senate finds that the court is not prohibited from making a conclusion from a judge on the basis of proven facts about the existence of such facts, which according to the Civil Procedure Law would not be considered as proven yet. The *empirical, experiential truths* are also very close to the known facts, for the evaluation of which the judge relied not so much on objective aspects as on subjectively gained experience.

2. *Facts admitted directly or indirectly by the other party*. This aspect was actively applied by the courts. Extensive application to this aspect can be seen in the case law of the Senate. In its 1927 judgments in cases Nr.o. 57 (*Latvijas Senāta Civilā Kasācijas departamenta ...*1928, p. 170) and Nr. 387 (*Latvijas Senāta Civilā Kasācijas departamenta ...*, 1928, p. 99), the Senate has indicated that the simple reprimands of a party to the fact that a certain fact or circumstance has not been proved do not in themselves oblige the opposing party to prove them until the party directly disputes the said fact or circumstance. In its judgment of 1926 in case Nr. 139, the Senate expressed a statement that the court has no right to impose on the plaintiff the obligation to prove the facts on which the claim is based, which the defendants do not particularly contest and which the defendants find only as unproven (*Latvijas Senāta Civilā Kasācijas departamenta* …, 1926, p. 127). In its turn, in the judgment of 1939 in case Nr. 229 there is a thesis that the court may refer to the explanations of the defendant, which the plaintiff has not specifically challenged (*Latvijas Senāta Civilā Kasācijas departamenta* …., 1939, p. 149). The Senate Judgment of 1928 in Case Nr. 95 states that the defendant's general phrase that he did not recognize the claim in general did not yet oblige him to prove certain parts of the claim, which the defendant did not criticize and contest separately, by raising appropriate objections and without providing the court with its calculations (*Latvijas Senāta Civilā Kasācijas departamenta ...*, 1928, p. 100).

It should be noted that this group also included cases when the defendant admits the claim or the claimant waives the claim by acknowledging the claim (Karcevs, 1939, pp. 9–10). In addition, Section 569 of the Civil Procedure Regulations, 1932, and the Civil Procedure Act, 1938, provided that a party who has admitted something may withdraw that opinion. That was possible only if the recognition did not relate to the party's own conduct and if the party could prove that it had errored without knowing the circumstance which came to light only later. The application of the institute of recognition to the evidentiary aspect is also apparent in case law. In the Judgment of the Department of Civil Cassation of the Senate of 1932 Nr. 869 (*Latvijas Senāta Civilā kasācijas departamenta* …1932, p. 115), the Senate states that the court may reject the plaintiff's request for the examination of witnesses to prove a statement that contradicts their earlier statements in the case. In the Judgment of the Department of Civil Cassation of the Senate of 1934 Nr. 254 (*Latvijas Senāta Civilā kasācijas departamenta* …, 1934, p. 502), the Senate states that Article 569 does not apply to extrajudicial confessions and may therefore be refused by a party. In the Judgment of the Department of Civil Cassation of the Senate of 1937 Nr. 1401 (*Latvijas Senāta Civilā kasācijas departamenta* …, 1937, p. 163), the Senate states that a party has no right to refuse or revoke the recognition of payment data expressed by that party's

trustee. The only exception was Section 572 of the Civil Procedure Act 1938, which provided that a person declared insolvent was not eligible for recognition in matters relating to their property for sale from the time they were declared insolvent.

However, it is important to note that Section 570 of the Civil Procedure Regulations 1932 and the Civil Procedure Act 1938 provided that if one of the parties admits a circumstance, such recognition is valid only in respect of the adjudicator himself. In the Judgment of the Department of Civil Cassation of the Senate of 1934 Nr. 510 (*Latvijas Senāta Civilā kasācijas departamenta ...*, 1934, p. 246), the Senate noted that Article 570 did not apply when the other participant did not contest the correctness of the recognition.

Nowadays, recognition applies to the means of proof (explanations of the party) and not to the grounds for exemption from proof (Civilprocesa likuma komentāri. I daļa…, 2011, p. 270).

3. *Legal presumptions*. This aspect was quite conditional. It should be noted that the presumption of the existence of a legal presumption (*praesumtio iuris*) – a legally significant, unproven fact based on the provisions of the law (Līcis, 2003, p.70) – as a ground for exemption from the burden of proof was not included in the 1932 Rules of Civil Procedure. V. Bukovskis explained that it was planned to include legal presumptions as a basis for release from the burden of proof in the 1932 Civil Procedure Regulations as soon as the basic principles of civil procedural law are included, as the doctrine of legal presumptions is closely related to them (Bukovskis, 1933, p. 334–335). However, legal presumptions as a basis for exemption from the burden of proof based on the basic principles of civil procedure law were not included in the 1938 Civil Procedure Law. At the same time, it must be stated that, in fact, legal presumptions were also applied as grounds for exemption from the burden of proof in specific cases, but in accordance with substantive law. The actual application of presumptions is also confirmed by case law; for example, in the already mentioned judgment of the Department of Civil Cassation of the Senate of 1924 in case Nr. 460 (*Latvijas Senāta Civilā kasācijas departamenta ...*, 1924, p. 98), it is acknowledged that the court is not precluded from applying presumptions, or even so-called factual presumptions. It should be noted, however, that in civil procedural law the concept of a legal presumption in matters of proof of procedural institutes did not develop during the period under review, and there is no evidence of this in either scientific findings or case law.

4. *Existence of a legal norm*. This was due to the fact that under the current legislation, it was only necessary to prove the factual circumstances. Under such circumstances, the parties did not have to prove the existence of certain legal norms.

5. *The amount of the claim when the court finds that it cannot be determined by applying the general rules on proof of claims*.

Although the Civil Procedure Regulations of 1932 and the Civil Procedure Act of 1938 do not explicitly establish preliminary facts as grounds for exemption from proof in civil proceedings, section 1019 of the Civil Procedure Regulations of 1932 and the Civil Procedure Act of 1938 provides that a judgment which has entered into legal force is binding not only on the litigants but also on the court which made it and on all other judicial and administrative authorities and officials in the country. This applied both to judgments in civil matters and to judgments in criminal matters. This was also pointed out in theoretical sources, clarifying that the judgment of the criminal court on the question whether the criminal offense actually took place and whether it was the defendant's offense is binding on the civil court (Bukovskis, 1933, p. 352).

The issue of the deadline for submitting evidence was interesting. Article 432 of the Rules of Civil Procedure of 1932 and the Law of Civil Procedure of 1938 provided that, no later than the first oral hearing on the case issue litigants were to be given all the facts on which their claims and allegations

were based and existing evidence or refer to evidence which they are unable to provide immediately. It can be concluded that the deadline for the submission of evidence was the first hearing at which the case was considered on the essence. Failure to comply with this deadline in accordance with the Civil Procedure Regulations of 1932 in general, but Section 434 of the Civil Procedure Act of 1938 as amended, was subject to a procedural sanction – a fine. In the judgment of the Department of Civil Cassation of the Senate of 1935 in case Nr. 297 (*Latvijas Senāta Civilā kasācijas departamenta ...*, 1935, p. 95), the Senate stated that Article 432 did not have the meaning that if one of the parties had not brought any defence or evidence to the first oral hearing before the court of first instance, it would have lost the right to use it in further proceedings, but in the event of non-compliance with this Article, the consequences provided for in Article 434 have occurred or may occur. The Minister of Justice, on the amendment of Section 434 of the Civil Procedure Act 1938, by providing the introduction of a strict procedural sanction, stated that in order to facilitate the timely submission of evidence, the provision on late evidence was supplemented by standardizing the procedure for appealing against decisions in such a way that these complaints do not reduce the severity of sanctions (the penalty is recoverable immediately) and do not delay the case (complaints about punishment are forwarded only at the same time as the appeal on the essence) (*Tieslietu ministra paskaidrojumi pie pārgrozījumiem ...*, 1939, p. 19).

Neither the Regulations of Civil Procedure of 1932 nor the Law of Civil Procedure of 1938 expressly provide for exceptions, however, based on a grammatical interpretation of Section 434, Paragraph One of the Civil Procedure Law of 1938,[4] the submission of evidence during the trial was, nevertheless, permissible, if it would not prevent the trial of the case or the court could not justify the timely submission of evidence as exculpatory. There is a similar regulation in Section 889 of the Civil Procedure Regulations 1932 and Section 889 (1) of the Civil Procedure Act 1938 in relation to the appellate instance. The Civil Procedure Regulations of 1932 and the Civil Procedure Act of 1938 provided that the submission of evidence to the appellate court is permissible, although the court does not find any justification for not submitting the evidence to the court of first instance, in which case the court could impose a fine. Respectively, the court had a choice as to whether impose a fine as well as the right to determine the amount of the fine. However, in any event, whether or not the court imposed a fine, the evidence had to be admitted.

In addition, there was the possibility of presenting evidence during the proceedings if the court itself found during the proceedings that a circumstance had not been proved. In the Judgment of the Senate in Case nNr. 571 of 1929, if the court finds the testimony of witnesses insufficient to satisfy the claim and in its judgment points to circumstances which must be proved in order to satisfy the claim but which have not been proved, it must not dismiss the claim in that case but must inform the claimant of the facts and provide a time limit for the submission of that evidence (*Latvijas Senāta Civilā Kasācijas departamenta* …, 1933, p. 87). In its Judgment nNr. 6 of 1928, the Senate stated that if the Trial Chamber itself found that the need to submit evidence to establish an important circumstance had arisen during the competition between the parties, without which the case could not be properly decided, it is obliged to declare it to the parties and determine a time limit for the establishment of this circumstance and for the submission of evidence (*Latvijas Senāta Civilā Kasācijas departamenta ...*, 1933, p. 88).

Another important aspect is that the position against a pre-determined force of evidence binding a court was expressed both in the Rules of Civil Procedure of 1932 and in Section 545 of the Code of Civil

[4] This Law provides that if, after the time limit referred to in Article 432 or the adjournment of the hearing referred to in Article 433, the litigant puts forward new circumstances or evidence which they may have previously delayed in the trial, a fine may be imposed on the guilty defendant.

Procedure of 1938, which stipulates that the land register, notarial, and certified documents, provided that the transactions entered into therein do not, by their nature, contravene the law, have probative value both between the parties to the contract and between their heirs and successors, unless they prove the authenticity of the acts or prove that they have lapsed. It should be noted that such legislation in fact contains the principle of public credibility, which stipulates that entries in public registers are to be considered publicly trustworthy, i.e., third parties can rely on the accuracy of these entries and act accordingly until proven otherwise. Evidence for the application of such a position can also be found in court practice – for example, in the Judgment of the Department of Civil Cassation of the Senate of 1936 in case Nr. 197 (*Latvijas Senāta Civilā kasācijas departamenta* …, 1936, p. 345). Here, the Senate stated that an act on which only the authenticity of signatures is certified is to be recognized as a private act that does not have the meaning of an act notarized or presented for certification, and the content of such an act may be overturned by witness statements.

Conclusions

By summarizing the research carried out in the article, the author has come to the following conclusions. The concept of evidence was not defined in the civil procedure regulations in force in the territory of Latvia in the period from 1918 to 1940. Nor has the essence of the concept of proof been specifically studied or explained in the scientific literature. In general, the evidence at that time was understood as the means used by the party to convince the court that its arguments were true. Consequently, it should be noted that during this historical period, the concept of evidence was understood and thus also mixed with the concept of the means of proof. Admittedly, the content of evidence denotes any factual information on which the court determines the existence or non-existence of legal facts and circumstances relevant to the case. This position is confirmed by the case law of the relevant period. Nor is the definition of the concept of proof provided in the rules of civil procedure in force from 1918 to 1940. Moreover, although there is some discussion among scholars of this period, the definitions they offer differ from modern theoretical conceptions of the purpose and essence of proof. It should be noted that the issue of the burden of proof and its distribution among the parties was regulated rather weakly during the period under investigation. However, it should be emphasized that we have retained the conceptual form of this burden in civil proceedings up to this day.

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Historical Aspects of the Institute of Evidence and Proof in Civil Proceedings in Latvia (1918–1940)

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S u m m a r y

The institute of evidence is an integral part of achieving the objectives of civil proceedings, and only through it can effective civil protection be ensured in the courts. Therefore, it is not at all possible to misjudge the significance and importance of evidence throughout the evolution of civil proceedings. The peculiarity of civil proceedings compared with other procedural jurisprudence can be seen in the fact that there is no pre-trial stage in which specific steps are taken to obtain and strengthen evidence, so the code of all civil proceedings is evidence and evidence taken by the litigants themselves. Therefore, special attention was paid to the aspects of the theory of evidence in civil proceedings at all times in the legal doctrine, legal regulation, and practical jurisprudence. This circumstance justifies the urgency of studying the historical aspects of the Institute of Evidence and Proof . Within the framework of this paper, the concept and essence of evidence, as well as the general rules of proof in Latvia in the period from 1918 to 1940, were studied.

Įrodymų ir įrodinėjimo instituto Latvijos civiliniame procese istoriniai aspektai (1918–1940)

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S a n t r a u k a

Įrodymų ir įrodinėjimo institutas yra neatsiejama civilinio proceso tikslų įgyvendinimo dalis ir tik juo remiantis galima užtikrinti veiksmingą asmens teisių teisminę apsaugą. Civilinio proceso, palyginti su kitomis teismo proceso šakomis,

ypatumas yra tas, kad jame nėra ikiteisminio tyrimo stadijos, kurioje būtų atliekami konkretūs veiksmai įrodymams surinkti. Pagal Civilinio proceso kodeksą visose civilinėse bylose įrodymai yra tie, kuriuos pateikia patys bylos dalyviai. Įvairiems įrodymų ir įrodinėjimo civiliniame procese aspektams visais laikais teisės doktrinoje, teisiniame reglamentavime ir praktinėje jurisprudencijoje buvo skiriamas ypatingas dėmesys. Taip pat labai aktualu teisingai įvertinti įrodymų ir įrodinėjimo reikšmę ir svarbą civilinio proceso raidoje. Straipsnyje nagrinėjama įrodymų samprata ir esmė bei bendrosios įrodinėjimo taisyklės Latvijoje laikotarpiu nuo 1918 iki 1940 metų.

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