

STANDARD OF PROOF AND RUSSIAN PROCEDURE LAW: UNKNOWN OR WELL-KNOWN?

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Abstract

Though Russian legal science discusses the need to introduce standards of proof in procedural branches of law, different branches of Russian procedural law (civil procedure, sports disputes procedure, criminal procedure) do not directly refer to the standards of proof used. However, this does not mean that this procedural law ignores the doctrine of standard of proof. For the constitution of standards of proof used is either the (1) indirect normative indication of the standard or (2) exemplary decisions of higher courts, sports arbitration. It is necessary to move from indirect, actual use in favor of normatively fixed and defined standard at the level of relevant legal acts. However, there is also a formal obstacle. At all branches of Russian procedural law, the judge (arbitrator) has the right to evaluate evidence freely, according to his inner conviction. This postulate is a two-way street; proving in many ways becomes a subjective procedure with an often not very obvious result for the parties to the dispute. There is also no uniformity within the framework of the procedural branches, which are identical in their legal nature. The branches of civil procedure and sports disputes procedure are private law, but in fact the standards of proof used in them are different. Criminal procedure, as a public branch of legal procedure, uses the strictest standard of beyond reasonable doubt in the trial itself, but resorts to a different standard for resolving issues

in the preceding stage of the process. The authors in this article provide a brief overview of the standards of proof in Russian procedural law (civil procedure, sports disputes procedure, criminal procedure) and draw conclusions concerning the current legal regulations of the issue and its possible evolution. The legal establishment of the standard of proof in civil procedure law, sports law, and criminal procedure law needs comparatives. Each of the standards of proof has merits, but their number should not be multiplied in the absence of doctrinal justification. That said differentiation of standards for particular stages of the dispute resolution procedure or types of disputes within civil or sports law procedure is not only permissible but seems inevitable. A similar conclusion can be drawn with respect to differentiating standards of proof for the stages of criminal procedure. The formulation of the content of the standards of proof in civil procedure, sports disputes procedure, and criminal procedure has not been completed to date. It seems that several actions need to be taken. First, to clarify the list of actually used standards of proof. Secondly, to identify the current goals and values of each of the three procedural branches of law (distribution between the parties of the burden of proof). Finally, to formulate the standards of proof for each of the named procedural branches: civil, sports, criminal.

Keywords: *standard of proof, burden of proof, comfortable satisfaction, preponderance of the evidence, beyond reasonable doubt, Russian Civil Procedure, Russian Sports Disputes Procedure, Russian Criminal Procedure.*

Introduction

The “standard of proof” as a doctrinal concept is widespread in the American and English legal systems. It serves as a certain reference point for the judge or arbitrator in deciding the circumstances of a particular case. A different standard of proof may be applied in different categories of disputes. In the continental legal system, the phenomenon of the standard of proof has not yet become widespread. At the same time, some Russian lawyers contrast the concept of the standard of proof with the principle of free evaluation of evidence (Ryzhov, 2012).

According to all Russian procedural acts, justice bodies evaluate evidence according to their inner conviction and no evidence has a pre-established force, i.e. the principle of free evaluation of evidence applies.

The doctrine of law tells us that any decision of a court or a similar court must meet the criteria of legality, validity, and fairness. This raises the legitimate question of what needs to be done to ensure that the decision meets all of these requirements. The resolution of any dispute requires the establishment, verification and evaluation of the factual circumstances accompanying the disputed legal relationship or the violation that has taken place. The burden of proof historically is understood as the need for a party to substantiate facts, the uncertainty of which may lead to adverse consequences for a party (see, for example, Vaskovsky, 1914). The burden of proof allows one to determine which of the disputing parties meets has not proven a certain fact.

The classical distribution of the burden of proof between the parties to a dispute accompanies civil litigation, argumentative justice, and criminal litigation. The shift of the classic burden of proof today exists only in the resolution of disciplinary anti-doping disputes in sports - an athlete must prove the absence of guilt or negligence for the ingestion of a prohibited substance or the use of a prohibited method (World Anti-Doping Code, 2021). However, the content of proof, i.e. the depth of evidence, also differs in individual disputes in civil proceedings. Since it is difficult to establish the objective truth, in any of the procedural branches, the process of proving the resolution of any dispute takes place under conditions of a varying degree of doubt about the facts and on the basis of the evidence that was presented by the parties. The authors of this article are academic experts and practitioners in three procedural branches of Russian law: civil procedure, sports disputes procedure, criminal procedure. Issues of evidence, distribution of the burden of proof, and the validity of decisions are familiar to the authors. This study is an introductory overview, stating of the main problems that accompany the three procedural branches of Russian law. At the end of the article, the authors present an array of conclusions, which will be used for subsequent publications on the stated topic.

The following is a consideration of standards of proof in the context of legal formalization and using in the process of dispute resolution in the three named procedural branches: civil procedure, sports disputes procedure, criminal procedure.

Civil Procedure.

In the last few years, the institution of a standard of proof has increasingly come to the attention of Russian civil procedural law researchers. The scientists' interest is not accidental. The use of a standard of proof concept in case law and the formation of new legislative settings require a theoretical comprehension of this legal institution.

The science of civil procedural law in Russia has developed an approach to the concept of a standard of proof, the essence of which can be expressed as follows: "a standard of proof is a criterion with reference to which the court, when evaluating introduced evidence, determines a fact" (Budylin, 2014, p. 25).

The establishment of a standard of proof is a natural consequence of the court's inability to achieve objectively true knowledge. Facts of the past cannot be established with absolute accuracy, and at a certain stage, marginal social costs of searching, presenting, researching and evaluating evidence begin to exceed social benefits from the incremental persuasiveness of positions in action on the facts of the dispute and reducing the probability of erroneous factual findings. In such cases, it is necessary to stop searching and to deliver a judgment based on probabilistic knowledge (Karapetov, Kosarev, 2019). A criterion is needed for one to draw a conclusion in terms of probability, and it is established by introducing a standard of proof.

The use of any given standard of proof in civil case adjudication must be justified with regard to the utilitarian approach, which means that when choosing a standard, its positive and negative consequences for society will be evaluated. The standard that provides the most positive versus negative consequences, in other words, that maximizes the social benefit, is recognized as the best. The main negative consequence of using one or another standard of proof is a judicial error. In a typical civil case, negative consequences of an error in favor of a complainant have exactly the same negative consequences as an error in favor of a defendant. Therefore, for civil proceedings, the "preponderance of the evidence" standard is recognized as optimal, it allows making errors in favor of a complainant and in favor of a defendant equally probable.

In civil procedural legislation of the Russian Federation, the term "standard of proof" is not used, nor is it defined. Concurrently, procedural codes set the rule for evaluating evidence. According to the Civil Procedural Code of the Russian Federation, the Arbitral Procedural Code of the Russian Federation, the court evaluates evidence according to its "intime conviction" (reasonable and well-founded confidence on

the correctness of a certain conclusion, based on objective facts and achieved as a result of a thoughtful, unbiased and comprehensive investigation of all the circumstances of the case), based on a thorough, complete, objective and direct evaluation of evidence presented for the case (Civil Procedural Code, 2002, art. 67; Arbitral Procedural Code, 2002, art. 71). The “intime conviction” approach is often perceived in the literature as some type of standard of proof, or at least as a rule equivalent to such a standard (Budylin, 2014). However, the question remains, which standard exactly? It is obvious that the “intime conviction” rule sets a high standard of proof, as it is also applied in criminal proceedings. Meanwhile it is not clear, whether a standard of proof in civil cases in the Russian Federation is similar to the “beyond reasonable doubt” standard or is it closer to the standard of “clear and convincing evidence”.

Although the very concept of “standard of proof” is not used in texts of normative acts, criteria for evaluating evidence are introduced by separate provisions of substantive law. According to article 393 of the Civil Code of the Russian Federation, a debtor is obliged to compensate a creditor for losses caused by non-performance or improper performance of an obligation (Civil Code, Part 1, 1994). In the context of rules on apportionment of the burden of proof, this provision can be defined as follows: a complainant claiming compensation for losses must prove the fact of defendant's actions causing losses in a certain amount. Obliging a complainant to prove all the facts, even at a level required by the "clear and convincing evidence" standard, would be an excessive, often impossible burden. Therefore, the legislative establishment sets a lower standard of proof: the amount of losses to be compensated must be established with a reasonable degree of credibility () (Civil Code, Part 1, 1994, art. 393, para. 2). This rule was extended by the Plenum of the Supreme Court of the Russian Federation to proving a causal connection between non-performance or improper performance of an obligation by a debtor and losses caused (Resolution of the Plenum, 2016).

The “reasonable degree of credibility” rule means that compensation can be awarded to a complainant even if the amount of losses, their occurrence due to defendant’s actions, are rather proven than rebutted. In this regard, the legislative establishment and the Supreme Court of the Russian Federation approach brings the standard of proof in cases on losses closer to the American standard of “preponderance of the evidence”.

Since “preponderance of the evidence” is a lower standard of proof, it can be concluded that the basic standard of proof in civil cases is closer to the standard of “clear and convincing evidence”.

The very concept of “standard of proof” is often used by courts of the Russian Federation when considering bankruptcy cases. A debtor’s bankruptcy procedure in the Russian Federation is initiated by an arbitration court upon the request of a debtor, their creditors or other authorized persons, if a debtor's property is not enough to satisfy the claims of all their creditors. During this procedure, in order to enforce their rights, creditors must present their claims on the debtor to an arbitration court considering the bankruptcy case. Having evaluated these claims in substance, an arbitration court can either include a relevant claim in the registry of creditors or refuse to do so. In their turn, other creditors of the debtor have a right to object to including new creditors in the registry of creditors (On Insolvency (Bankruptcy), 2002, art. 71). It is quite clear that creditors are interested in having the smallest number of claims included in the registry, as the percentage of the recovery of their own claims depends on this. However, the possibility of a creditor proving the inconsistency of another creditor’s claim being included in the registry are objectively limited, since the subject of judicial inquiry being included in the registry is the relationship between a creditor and the debtor, in which other creditors obviously did not participate and had no relevant information. At the same time, the debtor and a creditor, taking advantage of other creditors’ ignorance as to the economic activities of the debtor, can create fictitious obligations, ensuring control over the bankruptcy procedure by being included in the registry of creditors for non-existent obligations.

In order to mitigate the risks of such abuses, courts have developed the following approach: a creditor, to be included in the registry, must meet a raised standard of proof, to disprove reasonable doubts about the actuality of a claim. A raised standard of proof is applied if: (1) a creditor’s claim is based on the transfer of physical cash to a debtor or (2) a creditor is a person affiliated to a debtor (Resolution of the Plenum, 2016; Digest of Case Law, 2020). In return, for persons raising objections to a creditor being included in the registry, a “lowered” standard of proof is established. They should present arguments only for presence of a “reasonable doubt” in actuality of a claim (Decision of the Supreme Court, 2017).

For a creditor being included in the registry a standard of proof similar to the “beyond reasonable doubt” standard is established. At the same time, this standard is defined by the court as raised; therefore, the basic standard of proof in civil cases is lower than “beyond reasonable doubt” and is closer to the standard of “clear and convincing evidence”.

The “clear and convincing evidence” standard requires the parties, especially the complainant, to convince the judge that the

credibility of a fact in question is highly probable, or to give them firm confidence that the fact is true by presenting hard evidence.

It should be noted that application of the “preponderance of the evidence” standard in civil proceedings in the Russian Federation would step into conflict with regulation of evidential process in the Russian Federation, in particular, with the rules on apportionment of the burden of proof.

The general rule for apportionment of the burden of proof is as follows: each person participating in the case must prove circumstances to which they refer as reasons for their claims and objections (Civil Procedural Code, 2002, art. 56; Arbitral Procedural Code, 2002, art. 65). The initial burden of proof is borne by a complainant; under otherwise equal conditions, they must prove the facts that, in accordance with regulations of substantive law, are essential to satisfy a claim. For instance, if claiming for compensation for losses, a complainant must prove that a defendant's actions caused the losses (Civil Code, Part 2, 1996, art. 1064). According to the doctrine of the dynamics of the burden of proof, a defendant can make a defense by simple denial, without presenting any evidence until a complainant fulfills his burden of proof, proving all the facts on which the claim is based. If the complainant fails, let us say, if they present only indirect evidence of the facts on which the claim is based, the defendant will win the case.

The “preponderance of the evidence” standard, in turn, suggests the establishment of a fact by evaluating not an absolute, but relative weight of evidence presented by the parties, with a fact is determined being based on the amount of evidence presented by a complainant and a defendant. In a situation where a complainant presents more evidence for a fact than a defendant presents of its rebuttal, the complainant should win the dispute. The defendant, in return, cannot have a passive attitude, waiting for the complainant to fulfill the burden of proof; inaction may lead to loss of a case by the defendant.

Using the “preponderance of the evidence” standard in Russian civil proceedings may result in a situation where complainants, having presented only one inconclusive evidence of a fact in dispute, will win cases only because a defendant has not presented any.

In Russian civil proceedings there is no preliminary evaluation of evidence presented to the court for its sufficient strength, which would have siphoned off those cases where complainants did not provide any hard evidence of their right, thus not allowing them to win in proceedings where complainant's insufficient evidence outweighs the lack of evidence by a defendant. In the absence of such a mechanism, it is

difficult to use the “preponderance of the evidence” standard in civil proceedings.

Sports Disputes Procedure.

Disputes resolved at jurisdictional bodies of All-Russian sports federations are quite multifaceted: from disciplinary disputes (due to violation of obligations of membership in sports federations or violation of obligations of a competitor) to contractual disputes (fulfillment of obligations under employment contracts or agreements on transfers between athletes’ clubs). We have presented a simplified mosaic of sports disputes, which allows us to see two main areas of the practice of sports justice: misbehavior, all disciplinary disputes and contract, all contractual disputes. The diversity of sports disputes increases the relevance of the issue of the use by non-state sports jurisdictions of different standards of proof. All-Russian sports federations, as members of international sports federations, follow the example of regulations of the latter in choosing the standards of proof for dispute resolution. However, this choice is by no means always made by an international sports federation in favor of a clear distinction of standards of proof between different types of disputes. The very concept of “standard of proof”, despite its wide use in the acts of international sports federations or organizations, is not normatively defined. The situation is almost identical in practice.

Thus, in the array of decisions of the Court of Arbitration for Sport (CAS), it is possible to name single cases, in which the arbitrage refers to the concept of standard of proof. For example, CAS 2016/A/4501 in which the court defined the standard of proof as the level of certainty that the arbitrator needs in order to be certain of the existence of a particular fact (CAS 2016/A/4501, 2016, para. 117). Such a statement does not seem to bring the expected certainty to the understanding of the “standard of proof”. Perhaps for this reason, the regulations of international and continental sports federations do not often include standards of proof. As a consequence, the regulations of All-Russian sports federations are also frequently silent about such standards.

In CAS 2011/A/2490 the arbitrage noted that there is no universal standard of proof (which can be found in national procedural branches), although consistency on this issue between sports federations is desirable (CAS 2011/A/2490, 2012, para. 92). Nevertheless, each sports federation is free to decide which standard of proof to apply in specific disputes, subject to national public order. In turn, it is difficult

to expect unification of procedural regulations of different sports federations by introducing a single and binding standard for all. This would limit the autonomy of international or national sports federations. Therefore, All-Russian sports federations should more actively use the prerogative of rule-making, not focusing on the possible silence of international sports federations about the standard of proof for specific disputes.

The essence of the standard of proof, based on the few CAS decisions, can be expressed as follows: the amount of reliable evidence which will allow the establishment a particular disputed fact. To meet the standard of proof is to submit such a volume of credible evidence that will lead to the party's asserted circumstances being considered proven.

Sports justice has historically used such standards of proof as “comfortable satisfaction” and “balance of probabilities”. The latter of these standards is also discussed in the doctrine of Russian civil procedure. The strictest standard of “beyond reasonable doubt” is not applied in sports jurisprudence because it has the legal nature of public-procedural branches of law and is used in Russian criminal procedure (Shchepel'kov, Burlakov, Stoiko, Sidorova, 2019). All-Russian sports federations primarily indicate the “comfortable satisfaction” standard indirectly in their regulations (see, for e.g., Disciplinary Regulations, 2021, art. 67).

The standard “comfortable satisfaction”, as the most popular standard for sports justice, occupies an intermediate value in the theory of proof, lower than the standard of “beyond reasonable doubt” and higher than the standard of “balance of probabilities”, applied not only in sports, but also in national civil procedural laws. The starting point for the discussion of “comfortable satisfaction” in CAS jurisprudence are the CAS 2005/A/908 and CAS 2009/A/1920, in which we can distinguish two relevant points (CAS 2005/A/908, 2005, para. 5; CAS 2009/A/1920, 2010, para. 26).

The first relevant point is the seriousness of the sporting misbehavior or breach of contractual obligation must be determined. The second is the more serious the breach, the more persuasive the evidence must be for the sports federation’s jurisdictional body. One may agree with CAS that “comfortable satisfaction” is a sliding scale based on the degree of conviction, and the higher its level, the greater the degree of certainty of proof required. The higher the level of the violated right or legitimate interest of the subject of sports, the more serious should be the level of protection of both parties of the dispute, including the proof of guilt of one of them. But, for example, the procedure of investigation by sports federations of misbehavior and assigning disciplinary

responsibility in sports is heterogeneous, demonstrating different approaches. It is not always possible to find even an indirect indication of the standard of proof in resolving a dispute in the procedural rules of All-Russian sports federations. Moreover, we should not expect a clear allocation in the regulations of the federations of the standard of proof for the preliminary investigation of a subject of sport suspected of committing a misbehavior.

At the end of our brief introduction to the problem of sports justice let us name several features in the sport federations' regulations, which have a significant impact on the process of proof. First, the possibility of prosecution in the absence of the fault of the subject of sport (the application of the so-called "strict liability" in basketball, hockey, or soccer). Secondly, the refusal to use "beyond reasonable doubt" even when dealing with misdemeanors designated as crimes in Russian criminal law. Thirdly, maximizing flexibility in evaluating evidence for admissibility when the standards of criminal procedural law are not used as mandatory. Fourthly, the use of disciplinary sanctions, which can be identical to, or even sometimes superior to, administrative or criminal penalties in the degree of their negative impact on the personal and economic rights of sports subjects (for e.g., a lifetime ban on engaging in any sports-related activity).

Criminal Procedure.

It is within the framework of criminal proceedings that the greatest restrictions of the constitutional rights and freedoms of citizens are allowed according the court decision, both in the form of procedurally coercive measures such as detention, house arrest, prohibition of certain actions, confiscation of property, and in the declaration and imposition of criminal punishment, involving a restriction of personal freedom, or when placing a person in a hospital for the application of compulsory medical measures. In order to make a decision in the framework of criminal proceedings, it is necessary to investigate all the circumstances of the case fully, objectively and comprehensively. Any decision must meet the criteria of legality, validity and fairness, since the destiny of people is determined by such decisions. In this regard, an important question is to be discussed. What is necessary to be done so that the decision on the criminal case, regardless to the stage of the criminal process, meets all these requirements? To analyze the problem, it is necessary to turn to one of the fundamental principles of criminal proceedings, the presumption of innocence. This principle is fully implemented in the Russian criminal

process. The main content of its subject is determined by both international legal norms and the norms of the Constitution of the Russian Federation and the Criminal Procedure Code of the Russian Federation (Constitution, 1993, art. 49; Criminal Procedure Code, 2001, art. 14). In particular, it is established that the accused is considered innocent until his guilt concerning a particular a crime is proved in accordance with the procedure established by the Criminal Procedure Code and the court verdict that has entered into force. At the same time, the suspect or the accused is not obliged to prove his innocence. The burden of proving the accusation and refuting the arguments given in defense of the suspect or the accused lies with the prosecution. All doubts about the guilt of the accused, which cannot be eliminated in accordance with the procedure established by the Criminal Procedure Code, must be interpreted in favor of the accused, and the guilty verdict cannot be based on assumptions.

The price of an erroneous conviction, an erroneous recognition of a person guilty of committing a crime is too high, it can cause irreparable damage both to the convicted person directly and to the authority of the court. Moreover, it can be both an erroneous accusation and an erroneous justification. In this regard, there may be a question as to how to realize the goals and objectives of criminal proceedings; how to exclude the prosecution of innocent people; how to determine the necessary level and depth of proof, a sufficient amount of information to make a legal decision on guilt or innocence in such situations. According to legal theory, in order to solve these problems it is advisable to introduce so-called standards of proof in legal practice and criminal law.

The process of proving in criminal proceedings penetrates all its stages, but in the current Russian criminal procedure legislation there is no definition of the concept of the standard of proof. This term does not belong to the generally accepted scientific concepts in the criminal procedure doctrine.

The scientific literature contains various terms concerning standards related to the process of proof, for example, the standard of “substantiation of the charge” (Muravyev, 2017), the standard of validity (Smirnov, 2021), “the standard of proof” (Interview, 2021; Mezinov, 2017). It seems that in all cases the authors are trying to introduce a certain unification into the understanding of the proof process by analyzing its various components. The standard of proof is directly related to such categories as the purpose of proof, the burden of proof, sufficiency and reliability of evidence. The interpretations of the standard of proof existing in science allow us to conclude that there is no

unified approach to its content, despite the fact that the legal doctrine has recently revived the discussion on this topic (Mikhailov, 2019).

As for judicial practice, in the absence of legislative regulation of the category of standards of proof, courts apply these categories in law enforcement practice. In the first instance, a standard as “beyond reasonable doubt” is applied. In the Appeal Decision No. 56-APU14-29 the Supreme Court of the Russian Federation indicates: “Having assessed all the evidence available in the case, considering the requirements of Article 88 of the Code of Criminal Procedure, the Judicial Board concludes that the remaining after the exclusion of the protocol of confrontation between... and... the totality of evidence examined by the court of first instance comprehensively, fully and objectively is sufficient to consider the guilt of the convicted... proven beyond reasonable doubt” (Appeal Decision, 2014). In a number of decisions of the Supreme Court of the Russian Federation, the term standards of proof itself can be found. For example, in the Appeal Decision No. 59-APU19-1 the Supreme Court of the Russian Federation justifies its decision by pointing out that contrary to the arguments of the complaint of the defender of the convicted person... the court took into account... “the evidence examined during the solving of the case, which the court assessed in accordance with the standard of proof fixed in the Code of Criminal Procedure of the Russian Federation, that from the point of view of their relevance, admissibility and reliability, and all together sufficiency for conclusions about the guilt of the defendants in the deed and the decision of the guilty verdict” (Appeal Decision, 2019). “Compliance with the generally recognized principles of criminal proceedings allowed the court to correctly establish the factual circumstances of the deed, prove beyond reasonable doubt the guilt of the convicts and assign them a justly deserved punishment”. This is the position of the Supreme Court of the Russian Federation, expressed in the Decision No. 59-APU 19-1 (Appeal Decision, 2019). Despite the fact that courts use this terminology when considering criminal cases, the content of the concepts of “standard of proof” and the category “beyond reasonable doubt” as criteria for standard requirements is not disclosed or interpreted in any of the decisions. But de facto we can talk about the application of this standard. When courts use this idea in their decisions, they indicate that all evidence is subject to verification and evaluation in terms of relevance, admissibility and reliability, and in their totality, sufficient for the resolution of a criminal case. In addition, evidence obtained in violation of the requirements of the Criminal Procedure Law is inadmissible, has no legal force and cannot be used as the basis of the charge, as well as used to prove any of the circumstances provided for in

the Code of Criminal Procedure (Criminal Procedure Code, 2001, art. 73). Thus, there should be no doubt as to the quality of evidence nor that the procedure of collection and consolidation was followed legally, that they were carried out by the proper person or body and as a result of actions provided for by procedural norms. At the same time, any evaluative concepts are filled with content depending on the actual circumstances of a particular case, the assessment of which is included in the subject of the court trial. Indisputable doubt of the guilt of a person arising from the assessment of evidence from the point of view of admissibility and reliability, by virtue of article 49 (part 3) of the Constitution of the Russian Federation must be interpreted in favor of the accused (Criminal Procedure Code, 2001, art.14, part 3).

The Constitutional Court of the Russian Federation has repeatedly noted that the sentence of the court must be lawful, justified and fair (Criminal Procedure Code, 2001, art. 297); a guilty sentence cannot be based on assumptions, adjudication of sentence must be justified by the totality of the evidence examined by the court (Criminal Procedure Code, 2001, art. 302, part 4) and during the trial the guilt of the defendant in the commission of a crime is established, the descriptive and motivational part of the sentence must contain a detailed description of the criminal act recognized by the court as proven, as well as the evidence on which the court's conclusions regarding the defendant is based, including the reasons why the court rejected other evidence (Criminal Procedure Code, 2001, art. 307, parts 1, 2) (Decision of the Constitutional Court, 2020). It seems that the specified standard “beyond reasonable doubt” is more applicable when making final court decisions in a criminal case.

Discussion of the interim decisions at the pre-trial stages, can include the application of such a variant of the standard of proof as prima facie evidence, evidence reasonable at the first or view evidence that is sufficient at first glance. Such a standard is applicable, for example, when detaining a person as a suspect, when it is not necessary to collect all the evidences to resolve the issue of bringing a person to criminal responsibility. The norms of article 91 of the Criminal Procedure Code establish that an inquirer, an investigator has the right to detain a person on suspicion of committing a crime (Criminal Procedure Code, 2001). This concerns only the availability of initial information about the possible involvement of a person in the commission of an act. An even more streamlined formulation of the grounds for detentions is formulated in the Criminal Procedure Code: “If there is other data giving grounds to suspect a person of committing a crime, he or she may be detained if the person tries to hide, or does not have a permanent place of residence, or

his or her identity has not been established, or if the investigator, with the consent of the head the investigative body or with the consent of the prosecutor, sends a petition to the court for the election of a preventive measure in the form of detention against the specified person” (Criminal Procedure Code, 2001, art. 91, part. 2). The specified norms also do not require collection of all the data to be proved in accordance with the Criminal Procedure Code (Criminal Procedure Code, 2001, art. 73). Some authors propose to extend this standard of proof to the issuance of a decision on bringing as an accused. In part, we can agree with them. Since at the stage of the preliminary investigation in the framework of pre-trial proceedings, by virtue of the principle of presumption of innocence, we can only talk about some internal conviction of the investigator as to the guilt of the person.

Conclusion

In civil procedural legislation of the Russian Federation, the term “standard of proof” is not used. “The court evaluates evidence according to its intime conviction”. The intime conviction approach is perceived in the legal doctrine as an equivalent to a standard of proof.

The concept of “a standard of proof” is used in the judgment of the Supreme Court of the Russian Federation, which is evidence of the importance of this institution in forming Russian civil procedural law. Russian legislation and case law analysis leads to the conclusion that the basic standard of proof in civil cases is close to the standard of “clear and convincing evidence” used in United States law. Using a lower “preponderance of the evidence” standard in civil proceedings in the Russian Federation when resolving civil cases is difficult due to the absence of a stage of preliminary evaluation of evidence in Russian civil proceedings.

The diversity of standards of proof in civil proceedings, sports justice and criminal proceedings increases the requirements of justice itself. The freedom of discretion due to the uncertainty of the content of the standards of proof obliges to understandability, predictability and persuasiveness for the parties to the disputes of the rules of presentation and evaluation of evidence, the validity of a legally significant decision. Sports justice ignores the “beyond reasonable doubt” in favor of the introduction of an intermediate in severity “comfortable satisfaction” or less frequently of “balance of probabilities”, which is used mostly in WADA Code and anti-doping regulations. However, the content of the latter needs a comprehensive study. Does it really represent an intermediate level of requirement in the process of proof? Another issue

is that for certain categories of sports behavior disputes, which have a high level of danger in the tacit hierarchy of disciplinary offenses, the use of increased protection in proving the charges is seen as necessary to respect the nature of sports justice. Such disputes may include the match-fixing of competition results, the intentional doping cases, harassment and breaches of the fundamental rights of athletes.

Despite the fact that the courts in criminal cases use the specified terminology, the content of the concepts of "standard of proof" and "beyond reasonable doubt" as criteria of standard requirements is not disclosed in any of the court decisions. The standard of "beyond reasonable doubt" is applied in criminal proceedings in making final judgments in a criminal case. The standard of prima facie evidence is used for interlocutory decisions at the pretrial stages. The "beyond reasonable doubt" standard allows the defendant not to have to convince the judge that he or she is honest, only to demonstrate the degree of probability of his or her position, after which the burden of proof shifts to the prosecution to rebut those allegations. The burden of proof for the offence is thus placed on prosecutor.

In criminal proceedings, the standard of proof will allow implementing the goals and objectives of judicial proceedings, to exclude criminal prosecution of the innocent and exemption of the guilty. The standard will allow determining the necessary level and depth of proof, sufficient amount of information for making a legal decision on guilt or innocence. These considerations are also relevant to the sports justice in relation to behavior disputes.

The legal establishment of the standard of proof in civil procedure law, sports law, and criminal procedure law needs comparatives. Each of the standards of proof has merits, but their number should not be multiplied in the absence of doctrinal justification. That said, differentiation of standards for particular stages of the dispute resolution procedure or types of disputes within civil or sports law procedure is not only permissible but seems inevitable. A similar conclusion can be drawn with respect to differentiating standards of proof for the stages of criminal procedure.

The formulation of the content of the standards of proof in civil procedure, sports disputes procedure, and criminal procedure has not been completed to date. It seems that several actions need to be taken. First, to clarify the list of actually used standards of proof. Secondly, to identify the current goals and values of each of the three procedural branches of law (distribution between the parties of the burden of proof). Finally, to formulate the standards of proof for each of the named procedural branches: civil, sports, criminal.

Bibliography

- Appeal Decision of the Supreme Court of the Russian Federation, dated 05 August 2014 in case No. 56-APU14-29 (2014). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Appeal Decision of the Supreme Court of the Russian Federation, dated 02 October 2019 in case No. 59-APU19-1 (2019). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Arbitration CAS 2005/A/908 World Anti-Doping Agency (WADA) v. Coetzee Wium, award of 25 November 2005 (2005). Available at: <http://jurisprudence.tas-cas.org/Shared%20Documents/908.pdf> (Accessed 08.05.2022)
- Arbitration CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA, award of 15 April 2010 (2010). Available at: <http://jurisprudence.tas-cas.org/Shared%20Documents/1920.pdf> (Accessed 08.05.2022)
- Arbitration CAS 2011/A/2490 Daniel Köllerer v. Association of Tennis Professionals (ATP), Women's Tennis Association (WTF), International Tennis Federation (ITF) & Grand Slam Committee, award of 23 March 2012 (2012). Available at: <http://jurisprudence.tas-cas.org/Shared%20Documents/2490.pdf> (Accessed 08.05.2022)
- Arbitration CAS 2016/A/4501 Joseph S. Blatter v. Fédération Internationale de Football Association (FIFA), award of 5 December 2016 (2016). Available at: <https://jurisprudence.tas-cas.org/Shared%20Documents/4501.pdf> (Accessed 08.05.2022)
- Budylin, S. L. (2014). Inner conviction or balance of probabilities? Standards of Evidence in Russia and Abroad. *Bulletin of the Supreme Arbitration Court of the Russian Federation*, 3, 25-57.
- Decision of the Constitutional Court of the Russian Federation, dated 25 November 2020 in case No. 2841-O (2020). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Decision of the Plenum of the Supreme Court of the Russian Federation, dated 22 June 2012 in case No. 35 “On certain procedural matters related to consideration of bankruptcy cases” (2012). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Decision of the Supreme Court of the Russian Federation, dated 20 February 2019 in case No. 59-APU 19-1 (2019). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Decision of the Supreme Court of the Russian Federation, dated 25 September 2017 in case No. 309-ES17-344 (2017). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)

- Digest of Case Law in Resolution of Disputes Related to Establishment of Requirements for Controlling a Debtor and Their Affiliates in Bankruptcy Procedures, approved by Presidium of the Supreme Court of the Russian Federation, dated 29 January 2020 (2020). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Interview with Roman Bevzenko. (2021). “Balance of probabilities” versus “clear and convincing evidence”: what are the standards of proof? Available at: <https://shortread.ru/balans-veroyatnostej-protiv-yasnyh-i-ubeditelnyh-dokazatelstv-kakie-byvajut-standarty-dokazyvaniya-intervju-s-romanom-bevzenko> (Accessed 08.05.2022)
- Karapetov, A. G., Kosarev, A. S. (2019). Standards of proof: analytical and empirical study. *Bulletin of Economic Justice of the Russian Federation. Supplement to the Monthly Journal*, 5, 3-96.
- Mezinov, D. A. (2017). The Standard “Beyond Reasonable Doubt” as a criterion for achieving the goal of criminal procedural proof. *Bulletin of Tomsk State University. Law*, 23, 40-46.
- Mikhailov, A. (2019). Standards of Proof in Modern Criminal Proceedings. *Legal problems of Strengthening Russian statehood. Collection of articles*, 121-130.
- Muravyev, M. V. (2017). On the revision of legal standards of proof and evidence in criminal proceedings. *Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 2 (38), 141-145.
- Resolution of the Plenum of the Supreme Court of the Russian Federation, dated, 24 March 2016 in case No. 7, “On application by the courts of certain provisions of the Civil Code of the Russian Federation on Liability for Breach of Obligations” (2016). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- Ryzhov, K. B. (2012). Principle of free evaluation of evidence and its implementation in civil proceedings. Moscow. Available at: <http://www.consultant.ru/> (Accessed 08.05.2022)
- Shchepel'kov, V. F., Burlakov, V. N., Stoiko, N. G., Sidorova, N. A. (2019). Standard of proof” of the state of intoxication in criminal cases of traffic violations: realities and prospects. 2019. *Vestnik Sankt-Peterburgskogo universiteta. Pravo*, 10 (2), 373-389.
- Smirnov, A. V. (2021). Standards of Proof: Relationship With Presumptions and Burden of Proof Distribution. *Criminal Trial*, 12. Available at: <https://e.ugpr.ru/934289> (Accessed 08.05.2022)
- The Arbitral Procedural Code of the Russian Federation (2002). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)

- The Civil Code of the Russian Federation (Part 1) (1994). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- The Civil Code of the Russian Federation (Part 2) (1996). Available at: <http://www.pravo.gov.ru/>
- The Civil Procedural Code of the Russian Federation (2002). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- The Constitution of the Russian Federation (1993). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- The Criminal Procedure Code of the Russian Federation (2001). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- The Disciplinary Regulations of the Russian Football Union (2021). Available at: <https://rfs.ru/subject/documents> (Accessed 08.05.2022)
- The Federal Law, dated 26 Oct. 2002, No. 127, “On Insolvency (Bankruptcy)” (2002). Available at: <http://www.pravo.gov.ru/> (Accessed 08.05.2022)
- The World Anti-Doping Code (2021). Available at: <https://www.wada-ama.org/en/what-we-do/world-anti-doping-code> (Accessed 08.05.2022)
- Vaskovsky, E. V. (1914). Textbook of Civil Procedure. Moscow, 372 p.