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Epistemological Characteristics of Judicial Cognition in Civil Proceedings

Abstract. The article analyses judicial cognition in legal proceedings in the context of establishing the truth. Obtaining objective, reliable and true knowledge is a condition and prerequisite for the court to make a decision that satisfies the goals and objectives of legal proceedings. It is demonstrated that the development of a theoretical and legal model of legal proceedings, in which the opposition of two paradigms for establishing truth – formal and material – is removed, is possible only through the description of judicial cognition as a specific method of understanding social reality. This necessitates an explication of its epistemological aspects. The place of judicial cognition in the system of legal and procedural knowledge, as well as the relationship between judicial cognition and judicial proof, are considered in philosophical and legal contexts. The reduction of judicial cognition to judicial proof raises controversial issues about the relationship between adversarial and judicial-activist models of legal proceedings. It is argued that both judicial cognition and judicial proof can be considered as a single epistemological process due to being carried out within the framework of a single process of civil proceedings. Based on this assumption, it is possible to identify elements common to them in terms of phases of implementation. However, due to differences in the object, subject matter, and tasks of the subjects, the substantive content of these elements varies. The conclusion is substantiated that, as representing a particular case of legal cognition, judicial cognition is organised and directed by procedural principles and norms, constituting procedural cognition, whose content is comprised of legal norms (the formal, legal aspect) and factual circumstances of legal relations (the substantive, object aspect), while judicial proof serves as the mechanism for moving judicial cognition from probabilistic subjective knowledge to objective and reliable knowledge.

Keywords: legal cognition; procedural cognition; judicial cognition;

judicial proof; subject matter of judicial cognition; subject matter of judicial proof; judicial truth

Prospects for the implementation of intelligent systems based on artificial intelligence technologies in legal proceedings foreground research into the nature of truth established in civil proceedings. However, the results obtained during previous investigations into this issue may be deemed to be largely unsatisfactory. We will argue that this is largely due to the research having been carried out within the framework of theories that remained within the boundaries of classical scientific rationality. The dissertation of M.D. Olegov (Olegov 1999), in which questions of establishing truth in civil proceedings are systematically analysed within the framework of paradigmatic models of adversarial proceedings and judicial activism with their inherent principles, manifestations of interests, etc., and in which a synthesis of both models is also proposed, clearly demonstrates the limits of the approaches used in domestic jurisprudence when conducting research on this subject matter.

The main reasons for this are related to the limitations built into classical theories of establishing truth in legal proceedings. From our point of view, this consists primarily in a reliance on the correspondence theory of truth, extensive negative criticism of which from philosophical-legal positions is given in: (Przhilensky 2015). However, the relied-upon gnoseological schema of cognitive activity also turns out to be a relevant factor¹.

¹ In the context of the article, the gnoseological schema of cognitive activity is understood as the relationship between the subject of cognition and the object of cognition. In this regard, the subject of cognition in Russian theories of legal cognition is understood as an individual subject, while the epistemological schema of cognitive activity is understood as the relationship between the subject of cognition and the system of knowledge. However, in (post)non-classical theories, the subject is understood as a complexly organised collective of individuals communicating on the basis of universally recognised norms; the foundations of such understanding as applied to judicial proceedings can be found in: (Korneev 2006: 235-240). In Russian theories of legal knowledge, the subject of cognition is generally understood as referring to an individual subject. Accordingly, law as an object of analysis acquires the character of a discourse that integrates logical and legal components.

The development of a theory based on non-classical methodological positions opens new research perspectives in the field of establishing truth in legal proceedings, whose philosophical-legal explication is provided in: (Denikina 2008). The theoretical and legal foundations for a possible theory are currently being actively developed in Russian jurisprudence within the framework of the communicative theory of law proposed by Andrei Vasilyevich Polyakov.

The non-classical research programme set out in the present work will attempt to preserve the positive developments of previous research as foundational points for its development. Since classical theories of formal (juridical) and material (objective) truth established in legal proceedings have not, as far as the author is aware, been examined from this perspective, such an analysis constitutes the main purpose of this article.

Based on this, the present work undertakes the following tasks:

- Reconstruction of the classical model of establishing truth in civil proceedings;
- Identification of its elements that may become points for the formation and development of a new research programme;
- Determination of the methodological direction within which the construction of one of the possible non-classical theories of establishing truth in civil proceedings is promising.

To this end, judicial cognition not only turns out to be the only procedural means of solving the tasks of justice, but is also necessary for determining the veracity of the approach itself (the procedural means and methods of achieving the goal). Meanwhile, the establishment of objective, true and reliable knowledge serves as a prerequisite for making a judicial decision on a specific judicial case.

In the history of legal thought, the two main approaches to resolving the question of the nature of truth established in judicial proceedings are closely connected with two paradigms for organising the judicial process: pure adversarialism, which is characterised by the activity of parties and the formality of truth, and judicial activism, whose chief characteristics are the passivity of parties and the materiality (objectivity) of truth. However, practical considerations push towards the creation of a synthesis of these approaches

to understanding the nature of truth established in judicial proceedings. In this connection, one approach to creating a coherent conception of truth establishment in civil proceedings views the process through the lens of judicial cognition (Olegov 1999).

Judicial cognition encompasses both legal and cognitive aspects, constituting an act of cognition carried out in legal form. Consequently, civil proceedings, when viewed as judicial cognition, represent cognition structured within a procedural-legal framework. Thus, discussions about paradigms of organising the judicial process appear as discussions about models for the organisation of judicial cognition in civil proceedings.

Addressing the question of truth establishment through the lens of judicial cognition means that the two paradigms of civil judicial process organisation can be viewed as two paradigmatic models of judicial cognition organisation. However, such formulation necessarily leads to a synthesis of both positions because real civil proceedings possess unity. In other words, the subject of such cognition must possess unity, and the method of establishing the actual circumstances of the case must also possess unity, since establishing objective reliable knowledge about these circumstances is a prerequisite for court decision-making in accordance with the requirements of Article 2 of the Civil Procedure Code of the Russian Federation².

The heuristic nature of civil judicial proceedings lies in their very essence, with the civil procedural form and its rules establishing the algorithm of judicial cognition; however, their substance transcends mere cognition of the procedural subject matter. Its meaning is that the court, dealing with variable quantities at the beginning and during the process, is obliged to proceed from knowledge of the assumed to reliable and true knowledge based on facts that have legal significance; that is to say, to come with the help of legal means and methods that themselves require knowledge and

² See: *The Civil Code of the Russian Federation (Civil Code of the Russian Federation). Part One (introduced by the Federal Law of November 30, 1994 No. 51-FZ)*, available at: https://www.consultant.ru/document/cons_doc_LAW_5142/ (accessed July 02, 2025) (in Russ.); *The Code of Civil Procedure of the Russian Federation (CPC RF) (put into effect by Federal Law No. 138-FZ of November 14, 2002)*, available at: https://www.consultant.ru/document/cons_doc_LAW_39570/ (accessed July 02, 2025) (in Russ.).

qualification in the course of cognitive activity. Cognition of the subject matter of a specific proceeding is preceded by cognition of the juridical instrumentarium of judicial cognition; in order for knowledge to become true at the end of the process, it is important that the means of its comprehension also be true.

In other words, judicial proceedings, which from the perspective of cognition constitute a process of translating knowledge from hypothetical modality to apodictic modality, can be analysed as an applied research method, whose structure, in addition to principles, contains ontological, gnoseological, categorial-conceptual and logical-semantic components. The result of judicial proceedings, which is typologically predetermined by the structure of judicial proceedings, thus constitutes a new knowledge object whose characteristics are ideally and typically defined by the Civil and Civil Procedural Codes of the Russian Federation.

Contemporary procedural thought understands judicial cognition as formally constituting a synthesis of the logical and juridical in procedural activity, as the synchronous actualisation of theoretical and empirical knowledge of epistemological and legal material. According to this approach, which leads to an understanding of judicial cognition as the unity of gnoseological and procedural activity, it becomes possible to identify the distinctive features of judicial cognition at each stage of the development of judicial proceedings.

Through the categories of legal and procedural knowledge, judicial cognition is linked to an epistemological problematic. Legal cognition is viewed by jurists as a combination of cognitive processes, procedures and methods for acquiring theoretical and empirical knowledge about the phenomena and patterns of functioning and development of socio-legal systems (Gavritsky 2007). This effectively asserts that legal cognition is cognition that is realised by specific (juridical, legal) means and carried out within a legal categorial-conceptual system. Figuratively speaking, this represents a view of social phenomena and processes through the “optics” (theory) of law. At the theoretical level, such a vision provides discursively formed ideal constructs that are enshrined in legal norms, comprising specific ideal objects that integrate apodictic (descriptive-affirmative) and deontic (imperative-binding) modalities. Such modalities are “glued together” at the empirical level according to the objective reality of legal consciousness, whose phenomenon

and real social relations are perceived by their participants and observers in terms of legal relations.

The transition to the problematic of judicial cognition from the problematic of legal cognition is carried out according to the category of procedural cognition. In this context, legal cognition appears as a set of processes aimed at studying, collecting, generalising, systematising and analysing legal facts, along with their interrelations and procedural cognition that arises within the framework of a specific case. In other words, the presence of theoretical and empirical cognition recognised within the framework of civil proceedings must be linked by the category of procedural cognition while also taking into account the mechanism and means of such linking.

However, procedural cognition is a pragmatically oriented disquisition associated with procedural proof, the conditions for the implementation of which determine the characteristics of procedural cognition. (Belkin 2005). The specificity of this enquiry lies in being limited to a particular circle of individual facts constituting the event under consideration in judicial proceedings, and in establishing truth for the purpose of the correct resolution of a specific judicial case, i.e., the correct solution of tasks facing the court (Trusov 1960). At the same time, “such cognition... is rational and systemic, but its systemic nature, as the need to bring knowledge into a certain order based on the logical interconnection of concepts and judgments, is expressed by the subject of proof” (Borulenkov 2006: 75).

The procedural doctrine considers judicial knowledge as a system of related types of cognitive activity: cognition and proof of the factual, substantive and procedural circumstances of the case, cognition of the disputed legal relationship, the rights and obligations of the parties, as well as cognition carried out by higher courts when verifying or reviewing judicial decisions (Gureev 1981).

In other words, the analysed theory of judicial cognition points to proof as a mechanism for linking the theoretical and empirical levels of judicial cognition, while the subject-matter of proof, which is correlated with the object of judicial cognition, turns out to be the key means for linking these levels. Within the framework of proof as a mechanism for translating existing knowledge from random, chaotic knowledge (from the modality of hypothetical knowledge) into systematically ordered knowledge (apodictic

modality), the principle of non ultra petita (disposition principle) performs a key function as a means of transferring the material norms of the Civil Code of the Russian Federation into an ad hoc normative system “created” by the court for the consideration of each specific case.

Cognition and proof in civil proceedings share a common ontological source. That is to say, while they may differ in terms of the procedural activity that represents their content, they cannot be carried out separately due to being procedurally linked.

The arguments of the supporters of this position are based on an analysis of the powers of the court, as enshrined in the Civil Procedure Code of the Russian Federation, and in the process of establishing the actual circumstances of the case, the real rights and obligations of the disputing parties – in particular, in the course of proof: “Judicial procedural actions in the course of the parties’ activities to prove evidence are aimed at obtaining knowledge (cognition) of the actual circumstances of the case, their real rights and obligations.” The court does not bear responsibility for the outcomes of the case, but establishes and determines the circumstances as having significance for the case, as well as the party responsible for proving these circumstances. In accordance with Article 67 of the Civil Procedure Code of the Russian Federation, the court examines the evidence, evaluates it individually for reliability, sufficiency and interrelation (i.e., logical consistency), and accepts or rejects it. Based on this, it is argued that, as a participant in the process of proof, the court can be defined “... only as a subject of cognitive activity” (Boltuyev 2015: 156). Judicial cognition is oriented towards finding answers to questions arising from the procedural tasks of judicial proceedings (in particular, Article 196 of the Civil Procedure Code of the Russian Federation, paragraph 17 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 24/06/2008 No. 11³). Although the search for such answers is entrusted to the court, it can obtain them only through the proactive and evidentiary activities of interested parties.

³ *Resolution of the Plenum of the Supreme Court of the Russian Federation of 24/06/2008 No. 11 (as amended on 09.02.2012) “On the preparation of civil cases for trial”, available at: https://www.consultant.ru/document/cons_doc_LAW_78038/ (accessed July 02, 2025) (in Russ.).*

Thus, despite the commonality of the procedural goal and object, such a contradictory unity leads to a difference in the objects of judicial cognition and judicial proof. This contradiction also problematises the concept of the subject of cognitive activity in civil proceedings.

The object of judicial cognition is the material legal relationship that exists between the parties to the legal dispute. It is important to note that in the course of judicial cognition, a reconstruction of the disputed legal relationship is carried out post factum, which implies the “disappearance” of the real socio-legal relationship from the visibility of the court and its replacement with an ad hoc semiotic construct. For this reason, the study of the means of such construction and the methods of their application, as well as their recording in procedural norms, becomes an independent cognitive task.

According to the opinion of Yu. Borulenkov “...the truth should include not only reliably established circumstances of the case, but also the correct qualification from the point of view of the current law” (Borulenkov 2006: 80). Legal proceedings in civil cases are carried out on the basis of two codes – the Civil Code and the Civil Procedure Code. The norms of the first provide the basis for identifying and defining an offence. Based on the norms of the second, the issue of violation of the rights of specific individuals and legal entities is decided. The provision of paragraph 3 of part 4 of Article 198 of the Code of Civil Procedure of the Russian Federation directly indicates that, when making a court decision, the laws and other regulatory legal acts that the court relied on when making it, as well as the reasons why the court did not apply the laws and other regulatory legal acts referred to by the persons participating in the case, are to be indicated. This concerns both the court’s updating of legal knowledge and its use in relation to a specific case. The result of this cognitive activity is the knowledge formed by the court about a specific socio-legal situation (ontological aspect), which is described in legal terms of a specific material legal norm (gnoseological aspect).

The specificity of this knowledge is determined through the mediation of judicial cognition. The circumstances to be established in a case usually exist in reality before the initiation of civil proceedings; the court obtains all knowledge about them as a result of examining information contained in clearly defined sources

of such information (Article 55 of the Civil Procedure Code of the Russian Federation), i.e. as a result of examining legally recognised evidence in a given case. For this reason, judicial cognition in the methodological sense can be conceptualised as an algorithm of legal reconstruction.

In an epistemological context, this means that the court must establish the legal facts directly provided for by the hypothesis of the material norm, and, on their basis, conduct a reconstruction of real relations during the trial. Nevertheless, such a reconstruction is necessarily preceded by an act of construction, which in the field of law is carried out by the legislator. If in the act of construction, the material object and real relations remain visible to the knowing subject, then in the act of reconstruction they disappear and are replaced by semiotic objects. From an epistemological perspective, such a “semiotisation” of the object of cognition changes the characteristic of truth’s objectivity by transforming it from correspondent to conventional.

The consequences of this kind of transformation are that it forces us to place the emphasis of the participants in the civil process as epistemological agents somewhat differently. The traditional approach of specialists in the field of civil procedure recognises the subjects of judicial knowledge as the court and the persons participating in the case. However, the only obligated subject of cognition, by virtue of the function of justice assigned to it as an organ of public authority, is the court. As such, it undertakes to correctly determine the circumstances that are significant to the case. And since the court has no right to evade the judicial process, it is necessarily obliged to perform the functions of the subject of cognition.

Due to the presence of a substantive and legal interest of the parties to the process and a “procedural interest in its outcome” among a number of other participants in the process, they cannot be considered as “obligated” subjects of cognition, i.e. subjects oriented toward establishing objective and reliable truth. Moreover, the disposition principle presupposes the attitude of the party to the process to present its position as reliable and to record it as “legally correct”. While the principle of adversarialism establishes the existing agonism of the parties’ interests, the principle of the equality of parties levels their asymmetry. However these principles are notably inapplicable to the court, which is appropriately character-

ised by its connection to public interest and passivity in the proof process. Thus, the two models of organising civil legal proceedings are specifically based on the different roles of its participants (including the court) as epistemological agents. This explains precisely why it is **two** – and no more – characteristics of judicial truth that appear. Moreover, these characteristics must be reduced to a common denominator due to the general direction of the civil process and the imperative nature of the decision made by the court.

Discussion of the problematic nature of truth as established in a legal-procedural form again leads to the question of the object and subject of judicial cognition and judicial proof (Olegov 1999: 159).

In both cases, we are talking about the same circumstances that have legal significance and constitute the basis for the demands and objections of the disputing parties to the trial. But the non-identity of procedural knowledge and proof leads to a significant difference in their subject matter. “Proof is characterised by the selfish interest of a specific party, which, based on its capabilities, forms the subject of its proof. Whereas the subject of cognition must obtain a full, objective and comprehensive understanding of the actual circumstances of the case, the real rights and obligations of the parties... In civil proceedings, subjects of cognition, especially the court, are obliged to establish all the circumstances that are significant for the case” (Boltuyev 2015).

There are three things that stand out in the above quotation. Firstly, behind the difference between the subjects of procedural cognition and proof there is a real, objective conflict not only between the parties to the process, but also between all its participants. Secondly, both the subject of proof and the subject of cognition are formed by the subjects participating in the civil process. Thirdly, specific mechanisms are involved in the formation of the subject of cognition and the subject of proof in civil legal proceedings.

Taken together, these circumstances allow us to propose two theses. The first is that the difference between the two models of civil proceedings – adversarial and judicial activism – conceals the difference between two subjects of outwardly similar types of activity within the framework of a single judicial process. Thus, the observed tension in jurisprudential discussions is to a large extent connected with the theoretical indistinguishability between

the subjects of these epistemological processes. According to the second thesis, the subject of proof links the theoretical and empirical levels of procedural cognition through its correlation with the subject of judicial cognition as a single (protocol) statement with a general statement recorded in the material norm of the Civil Code. In this context, the “verification by modus tollens” of protocol statements is an ideal-typical model of the movement of civil legal proceedings.

Taking into account the above, the focus of research attention when discussing the nature of the truth established in the judicial process shifts to the mechanisms of formation of the connection of the objects of cognition and proof in civil proceedings, to the identities and differences of the stages of these processes and their content.

In a real civil trial, the stages of knowledge and proof occur in parallel – and in some cases may even coincide in the procedural actions performed. Here it is also true that the name and content of the stages of cognition may differ somewhat from the same components of proof, since they are carried out by different subjects of civil proceedings, who have different legal status and different goals of activity (Olegov 1999: 159-160).

Within the framework of civil legal proceedings, it is customary to minimally distinguish the following stages of procedural knowledge:

- (1) Definition of the subject of cognition and the range of relevant evidence;
- (2) Gathering (assistance in collection) of evidence;
- (3) Evidential argumentation;
- (4) Examination of evidence;
- (5) Evaluation of evidence.

The first stage of the cognitive process occurs at the stages of initiating a civil case and preparing the case for trial. Its content is the definition of the subject of cognition and the range of evidence relevant to the case. The central subject at this stage is the court, which begins the process of cognition by studying the essence of the claim presented by the plaintiff. In this case, the object of cognition will be the norms of substantive law, i.e., the legal grounds for claims. On the basis of the norms of substantive law applicable in a given specific case, circumstances are determined

that are important for the correct resolution of the case, the range of which can be determined in advance by the legislator.

However, the parties to the process also take part in determining the subject of cognition and the circumstances relevant to the case. The plaintiff, assuming a violation of his rights and/or failure of the defendant to fulfil his obligations, appeals to his understanding of the circumstances that are relevant to the case, thereby effectively determining the subject matter of his proof. The defendant also declares his understanding of his rights and obligations, including circumstances that may be ignored or concealed by the plaintiff for various reasons and motives. In this way, he similarly determines the subject matter of his proof. Formulating a list of circumstances of the case for a legally correct resolution of the case that take into account the positions of the parties, the court then determines the subject of proof based on the subject of judicial cognition. From the epistemological side, this is normative knowledge, i.e. formal knowledge that creates the conditions for obtaining a true judicial decision.

At the second stage, the main subjects of knowledge are the parties to the process: the plaintiff, the defendant and other participants in the process. In his unambiguous recognition of the plaintiff and the defendant as subjects of proof, the legislator imposes on them the obligation to present evidence. It is clear that the court cannot be a subject of proof due to its functional goals and duties in civil proceedings. Since knowledge at this stage occurs within the framework of the subject of proof, the court, which is within the framework of the subject matter of judicial cognition, cannot demand evidence from the parties that goes beyond the subject matter of proof. The limitation of the court's cognitive activity to the subject matter of judicial cognition is predetermined by its position as a point of entry of public interest with the aim of removing the conflict of private interests of the parties. The court's connection with the public interest is most clearly revealed in a situation where, as an authority operating within strictly defined procedural frameworks, it assists the parties in obtaining evidence.

At the third stage of evidentiary argumentation the main cognitive activity also belongs to the parties and their representatives. In terms of content, this stage involves the presentation of their positions by the parties and their support with arguments. At this

important stage, it is the direct examination of evidence that ensures the self-evidence (before the eyes of the court) – and thus the reliability – of the knowledge obtained. This is a translation of judicial cognition as mediated knowledge of the past into direct (testimonial) cognition, i.e. “here and now” an event occurring; this is a reconstruction of the past in the present.

At this stage, each party pursues its own interests, trying to convince the court that it is right. Due to the subordination of evidentiary argumentation to the subjective goal, the knowledge obtained by the court is not yet objective in nature, instead comprising probabilistic judgements. The task of the court is to clear the acquired knowledge of its subjective nature and to obtain, on its basis, reliable knowledge about the actual circumstances of the case, which has the character of necessary reliable knowledge. This problem is solved by the court at the next stage.

At the fourth stage – examination of evidence – activity in cognitive operations, according to paragraph 3 of Article 67 of the Civil Procedure Code of the Russian Federation, once again returns to the court. The essence of this stage is the perception and study of evidentiary information by the court and the persons participating in the case (Bonner 2000: 73). The examination of certain properties of a source of evidence through the use of legally permitted means of proof may create the impression that this stage is part of the process of evidential argumentation. This is precisely the position that prevails in most jurisprudential publications. In reality, however, examination of evidence, apart from the formal juridical-procedural aspect – namely, the acceptability of evidence from the standpoint of law – also has a substantive aspect: the formation of judicial conviction in the correctness of the proving party’s position. That is, the cognitive task of this stage is to form the reliability of the knowledge obtained.

The isolation of this stage is important not only due to legal and epistemological aspects, since its independent isolation also follows from the interest of the party presenting evidence in the outcome of the trial. It is the party to the proceedings that is interested in convincing the court of its rightness on the basis of and with the use of this particular evidence. This interest can be interpreted within the framework of the process as the interest of the party in the evidence being recognised as legally admissible, legally reliable and legally significant.

Due to the latter aspect, one cannot help but recognise the parties as participants in the process of examining evidence as a stage of cognitive activity. However, in connection with the activity of the parties in the examination of evidence, taking into account the principle of competition and the agonistic nature of their interests, specific tasks arise before the court.

Thus, in addition to guiding the entire process of examining evidence, the court as a subject of cognitive activity links the evidence obtained with the circumstances of the case that are subject to knowledge and identifies the presence or absence of a causal relationship between them. Insofar as it is the public figure authorised to do so, the court also establishes the existence of this causal relationship as legally significant and the legal consequences arising from this relationship.

In other words, cognitive activity at this stage again unfolds within the framework of the subject matter of judicial cognition.

The fifth stage – evaluation of evidence – follows from the previous stage. It is no coincidence that the Civil Procedure Code of the Russian Federation does not separately distinguish the examination of evidence but regulates both stages in Article 67. The participants in cognitive activity remain the same; they are objectively compelled to conduct evaluation of evidence from all parties for the achievement of their own goals, but their functions change (Lelchitsky 2008: 9). Within the framework of proof as a mechanism for translating existing knowledge (from random, chaotic knowledge in the modality of hypothetical knowledge) into systematically ordered knowledge with apodictic modality, the principle of dispositivity performs a key function as a means of transferring the material norms of the Civil Code of the Russian Federation into an ad hoc normative system “created” by the court for the consideration of each specific case.

In other words, based on the provisions of Article 67, paragraphs 3, 4, part 2, Article 198 of the Civil Procedure Code of the Russian Federation, on the basis of the accepted argumentation of the parties, the court constructs a new object of knowledge in which the identified systemic relationships between all the circumstances of the case are reproduced in legal concepts. From an epistemological position, at this stage, complex cognitive work is carried out, as a result of which the reliability of each of the investigated

circumstances is confirmed. Only after reconstructing the entire set of actual circumstances of the case is it possible to confirm the correspondence of the information contained in the evidence to reality; only comparison with the entire set of circumstances allows the reliability of the information in a particular piece of evidence to be assessed. However, each individual circumstance is a consequence of the information contained in a separate piece of evidence. The ensuing problematic cognitive situation is resolved by moving along the hermeneutic circle. In turn, obtaining the totality of the circumstances of the case imposes a number of requirements on the totality of evidence as its premise – logical consistency, etc. – which, in their entirety, provide grounds for the evaluation of evidence by the court as the subject of cognition.

The analysis carried out allows us to draw the following conclusion based on the dynamics of the trial. Procedural cognition occurs at two ontological levels. Having a common object in the specific circumstances of the case, cognitive activity is carried out within the framework of two subjects of cognition. Within the framework of the subject matter of judicial cognition, it is realised at the level of ideal-typical objects. Within these limits, the knowledge obtained acquires an objective (material) character as corresponding to the object – i.e., the norm of substantive law. It is at this same level that its truth is ensured. Since the method of connecting the obtained results is logic, the thus established truth takes on a formal character. Within the framework of the subject of judicial proof, cognitive activity is realised at the level of empirical facts – i.e., the actual circumstances of the case. The procedural nature of cognition leads to their acquisition of legal – i.e. formalised – characteristics, thanks to which they can be introduced into judicial cognition. The mechanism for introducing factual circumstances of a case into judicial knowledge as legal facts is their description according to procedural rules in terms of the applicable substantive rules. Thanks to such cognitive activity, what is acquired in forensic knowledge acquires the characteristic of reliability.

Summarising the material presented in the article, we can conclude that, although the issue of the nature of truth established in civil litigation is a fairly “well-trodden path”, legal theorists have yet to propose an entirely satisfactory solution. The reason for this lies in the “empirical-utilitarian” approach to the discussion of this

issue by legal scholars. Given that the practical unity and integrity of the civil judicial process make it imperatively necessary, it is therefore all the more surprising that the question of synthesising the two approaches is rarely raised.

The approach proposed within the framework of the procedural theory, whose main provisions are reproduced above, contains a number of “tension points” and contradictions that tend not to be recognised as constituting a unified complex. Again, the most likely reason for this state of affairs is the continued attempt to solve problems of judicial knowledge within the paradigm of theories of “classical scientific rationality”. The analysis conducted allows us to assert that behind the “utilitarian” problem of the nature of judicial truth lies a whole complex of theoretical problems associated with the understanding of the procedural code as a method of studying social phenomena by legal means. However, the “nodes” of the problematic explicated in the article are only part of the problematic field. Along with the study of the connection between ontological levels, logical modalities and other issues raised in the text, an important part of this field are such issues as the mechanism for transferring an object (provisions of material norms) into a new constructed legal object (judicial act), temporal aspects of the modalities of procedural knowledge, etc. Looking at the list of such questions, it becomes clear that theories based on “classical scientific rationality” have reached the limit of their heuristic capabilities. The search for answers to emerging questions must therefore be conducted within the framework of theories formed on the basis of (post)non-classical scientific rationality. And, as it appears to the author of the article, good prospects for this search are provided by the methodologies of communicative and/or transcendental pragmatics.

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