

## **The Party's Explanations in the Civil Court Proceedings**

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### **Abstract**

According to the Georgian Civil Procedural Code, evidence is information received in legal way, based on which parties protect their rights and legal interests. Physical and juridical persons protect their civil rights in the court. They establish their suit demands on facts which can be proved by means of evidence. So, evidence has great role in the civil process. There are a lot of cases when a party has significant advantage against an opponent, foreseeing material law norms, though his/her suit demand is possible not to be satisfied in the discussion of the case, reasoning not having enough and real evidence, as civil legislation imperatively defines, that each party should prove circumstances on which he/she establishes their demands counterclaim, parties themselves define which facts should be based on their demands or by which evidences these facts should be proved. In the given case, the aim of our research is to study the evidence the party's explanation, as an evidence in the court practice, is evaluated in the court, how homogeneous the court practice is in relation to this issue and what kind of flaws we have in this aspect.

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**Keywords:** Civil, explanation, evidence, evaluation, decision

### **Introduction**

The Civil Procedural Code adopted on November 14, 1007 defines that in the court none of the evidences has in advance established power. The court evaluates evidences by its internal belief, which should be based on its complete and objective discussion in the court session, after which it makes conclusion about existence or non-existence of important circumstances related to the case. It is obligatory that the court's internal belief related to the evidence be reflected in the final decision, otherwise we will receive groundless decision. It should be taken into consideration that the number of evidences is not crucial for determining important circumstances for the case. In this case the decisive factor is its content and convincingness.

Accordingly, the court's decision can be based on even one convincing evidence.

The court cannot decide any case without determining factual circumstances and for determining them it uses evidences. Aim of the court is to protect rights and interests foreseen by law. To protect these rights, the court has to determine if the right which a suer demands to be protected really exists or not and if the corresponding obligation is imposed on a defendant and how it is expressed. Rights and obligations are not formed themselves. Law relates the existence, changes and termination of rights and obligations to certain juridical facts. The court can base its decision only on those factual circumstances which are presented by the parties on the court trial and are strengthened by proper evidences. To decide the particular case properly, the court has to determine in advance the fact having great importance for making decision. The process of determining facts is rather meticulously regulated by the civil procedural legislation. Legislation defines area of the means of evidence, which can be used by the court for determining factual circumstances, possibility and destination of this evidence, distribution of evidential burden among parties, which party has to prove which circumstance, the rule of researching of evidence, general rule of evidence's evaluation and so on.

In the civil process evidences are means of proof defined by the law, by using of which the court can establish factual circumstances for deciding the case correctly. Law exhaustively defines kinds of evidence. These are: explanations of parties (the third person), testimony evidence of witness, written and material evidences, experts' opinion and materials giving statements of facts.

According to the procedural code, the court is obliged to analyze evidences. At the court session, the judge has to listen to the explanations of the participants of the case, testimony evidence of witness, experts' opinion; the judge has to learn the written evidence, look through the material evidence and materials giving statements of facts. Thus, violation of immediacy rule and deviation from it in the court practice is qualified as a mistake with all legislative consequences (2). It is true that united rules are used for collection, analyze and evaluation of the evidence, but each means of evidence has its own specifics from the point of view of its content and procedural form of usage.

### **Materials and Methods**

Basic material of previous research is Georgian Civil Procedural Code and Court Acts (decisions) adopted on November 14, 1997. To give legally correct definition to the problems related to this issue, it is important to use the court practice which depicts today's reality. Namely the court

practice specifies the problematic character of this issue. Thus, it is important to analyze flaws which exist in the court practice and establish the united practice related to these issues.

In the civil process is established the principle of free evaluation of evidence by the court. It is obvious, that internal belief does not mean to act willfully. Court's willfulness is a groundless, unjustified position which is based on the court's own sympathy and wishes. Court's internal belief is a subject of evaluation, subjective criterion which must always be based on some objective facts. Evaluation of evidence, as all other evaluations, is a mental process and in case of such evaluation, the court should guide with the laws of logic that teach us to think correctly. Evaluation of evidence by the court means individual as well as united evaluation. Court is obliged to evaluate evidences in terms of their content and juridical convincingness. Court in its decision should emphasize the opinion due to which it found out some evidences real and some unreliable. It should be reflected in the decision why in the particular this or that evidence was evaluated this way and not in another way. Such exigency of law has different meaning, but one of the most important meanings is that the higher court has to examine factual ground of the decision; this will be impossible if the reason why the court accepted or denied this or that evidence is not indicated in the decision.

In the comments on the Article 127 of the Civil Procedure Code of Georgia, the authors write that "a party is a person who is participant of a legislative dispute; so, he/she should be well aware of circumstances that are to the case. The legislator follows this point of view when he/she considers parties' explanations as independent and important source of the evidence. We have to differ from each other that part of the explanation which forms and specifies a claim and that part of the explanation which concerns circumstances of the case. Evidence is the part of parties' explanations which proves existence and non-existence of circumstances that are important for solving the case correctly. Regardless how parties' explanation is presented – orally or in a written form, only that part of the explanation has the evidentiary value which includes the indication about facts" (3). Consequently, the practice spread in the court, according to which the explanation about the case's factual circumstance is given not by the party himself/herself, but by his/her contractual representative, for example lawyer, does not correspondent to the law and its imperative demand. According to this: "The process of establishing the circumstances that are essential to the case shall start by examining the parties (third parties, joined parties, legal representatives): The parties shall provide explanations on the circumstances of which they are aware and that are essential to the case" (the first part of the Article 127 of the Civil Procedure Code of Georgia). Contractual representative has wide procedural rights. He/she can analyze

the case materials, expresses ideas about authenticity of evidence provided in the case, also about the fact which law should be used and what kind of decision should be made, etc.; but he/she cannot use the function of a party as source of the evidence, also cannot use the function of a witness or an expert (1).

The Supreme Court of Georgian, in its judgment which was done on the case #სს-217-543-09(4), explains that the Court of Appeal evaluated evidences existing in the case neglecting demands of the second part of the Article 105 of the Civil Procedure Code 105 according to which a court shall evaluate evidence according to its inner conviction based on comprehensive, full and impartial examination of the evidence, as a result of which it shall rule on the existence or absence of the circumstances that are essential to the case. Particularly, the Chamber of Cassation in the mentioned judgment states that as one of the defendants recognized the suit, this represented basis for satisfaction of the suit at least in the part of the defendant. The court left this fact without attention what caused incorrect decision. Also the Chamber of Cassation noted that the first instance court did not listen to the explanations of this defendant. Party's explanation is an important evidence, even from the point of view of the regulations given in the Article 131 of Civil Procedure Code. According to this norm, the court can consider the confirmation of existence or non-existence of circumstances by one side on which the second side establishes his/her claim or counterclaim as an enough evidence and base its decision on it. The defendant with the given explanations in the court of appeal proved the circumstance noted by the suit, i.e. the fact of capturing inheritance by a suer but the court of appeal did not discuss this explanation fully and thoroughly. By recognizing this circumstance stated in the explanation, according to the Article 131 of the Civil Procedure Code, the court can make a decision and satisfy a claim. Otherwise, it should be justified why the court refused the party's explanation. From the above mentioned we can say that the Chamber of Cassation considered that the judgment of the court of appeal, by which the suit was not satisfied was incompletely justified, due to which the judgment of the court of appeal was abolished and the case for re-discussion was returned back to the same court.

## **Conclusion**

Considering the above mentioned, it can be said, that justice is a complicated process of research. Unlike other researches, where there is freedom of expression and making conclusions, the final decision of the court should be based on evidences corresponding with each other. When we speak about just and objective court, first of all we should take into consideration justification of decisions made by the judge, how it comes out

from evidences given at the process. If the decision of the court has to be objective, then the information and the facts which are given in the case as evidence should be reliable and authenticity of evidence is determined by the court while discussing the case and comparing evidences. This should be fully formulated in the decision.

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