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*https://doi.org/10.34739/dsd.2022.02.14*

# BURDEN OF PROOF: STANDARD OF PROOF IN COURT PROCEEDINGS. LATVIAN EXPERIENCE

**ABSTRACT:** The topicality of a subject matter burden of proof in major court proceedings is based on an ambiguous understanding of the standard of proof in legal practice, that is, of the moment when a fact is considered to be proven or unproven. The goal of an article is to research legal regulation of burden of proof in civil procedure, administrative procedure, administrative offence procedure and criminal procedure law and to determine standard of burdens of proof within each of these procedures. The burden of proof or duty to prove a claimed fact is an essential element of any evidentiary proceedings. The determination of a standard of proof is an ambiguously understood issue in legal theory and especially in legal practice. Ambiguous understanding of standard of proof in legal practice may cause determination of unproven facts as proven or vice versa, or even lead to finding innocent persons as guilty. The author, researching the burden of proof in the so-called major court proceedings, provides an explanation of the legal aspects of its standards.

**KEYWORDS:** law, burden of proof, standard of proof, civil procedure, administrative procedure, administrative offense procedure, criminal procedure

# CIĘŻAR DOWODU: STOPIEŃ DOWODU W POSTĘPOWANIU SĄDOWYM. DOŚWIADCZENIA ŁOTWY

**ABSTRAKT:** Aktualność tematyki ciężaru dowodu w ważniejszych postępowaniach sądowych" opiera się na niejednoznacznym pojmowaniu standardu dowodowego w praktyce prawniczej, czyli momentu, w którym fakt uznaje się za udowodniony lub nieudowodniony. Celem artykułu jest zbadanie regulacji prawnych ciężaru dowodu w procedurze cywilnej, postępowaniu administracyjnym, postępowaniu w sprawie wykroczeń administracyjnych i procedurze karnej oraz określenie standardów ciężaru dowodu w ramach każdego z tych postępowań. Ciężar dowodu lub obowiązek udowodnienia twierdzonego faktu jest istotnym elementem każdego postępowania dowodowego. Określenie standardu dowodowego jest zagadnieniem niejednoznacznie rozumianym w teorii prawa, a zwłaszcza w praktyce prawniczej. Niejednoznaczne rozumienie standardu dowodowego w praktyce prawniczej może prowadzić do uznania nieudowodnionych faktów za udowodnione lub odwrotnie, a nawet doprowadzić do uznania winnymi osób za niewinne. Autorka, badając ciężar dowodu w postępowaniu sądowym, wyjaśnia prawne aspekty jego standardów.

**SŁOWA KLUCZOWE:** prawo, ciężar dowodu, stopień dowodowy, procedura cywilna, procedura administracyjna, postępowanie wykroczeniowe, procedura karna

## INTRODUCTION

The problematic and relevance of the research topic is related to the fact that in each of the legal proceedings or procedural directions – civil proceedings, administrative proceedings, administrative offence proceedings and criminal proceedings, its participants face to evidence and proof, the burden of proof, sufficiency of evidence, and other issues that are specific to each of the aforementioned areas of procedural law. This article examines the burden of proof in the context of the standard of proof in each of these processes, or, more precisely, the limits of the burden of proof in each of them. Understanding of this issue is not only a theoretical but also a practical problem, especially in judicial practice where an ambiguous understanding of the burden of proof can be observed. Research hypothesis: in the theory of Latvian procedural law, there is a mutually contradictory understanding of the standard of proof, namely the moment when a fact is considered proven or unproven. The purpose of this article is, using methods of analysis and synthesis, as well as interpretation of legal norms, to study the legal regulation of the burden of proof within the framework of civil procedure, administrative procedure, administrative offence and criminal procedure law and clarify the burden of proof standard in each of them.

The legal doctrine distinguishes different standards of proof, or more precisely, the limits of the burden of proof. For example, such standards of proof as reasonable suspicion, probable cause, preponderance of evidence, clear, and convincing evidence, beyond a reasonable doubt[1]. In Latvian legal doctrine and procedural law, the above-mentioned standards of proof are also known by one of the above-mentioned or slightly different names. Among the mentioned standards of proof, the standard of reasonable suspicion is considered the lowest, and the standard beyond reasonable doubt is considered the highest.

In civil procedure law, in accordance with the mainly adversarial principle implemented in it, the burden of proof is generally imposed to the same extent (equally) on each party and the other participants in the case. The aforementioned can be characterized by the scales of the goddess Themis and the principle of Roman law: "*Da mihi facta, dabo tibi jus*", which translated from Latin means: "Give me the facts, I will give you the rights"[2]. The strengthening of the burden of proof can already be seen in Article 92 of the Law on Civil Procedure[3], which defines the concept of evidence and stipulates that evidence is the information on the basis of which the court determines the existence or non-existence of facts that are important in judging the case. However, in a direct way, *onus probandi* is established in the first part of Article 93 of the Civil Procedure Law, stipulating that each party must prove the facts on which it bases its claims or objections. The claimant must prove the validity of his claims. The defendant must prove the validity of his objections. The second part of this article stipulates that evidence is

[1] J. Jr. Fleming, Burdens of Proof, "Virginia Law Review" 47(1) 1961, pp. 51-70.
[2] M. Bērziņš, Objektīvās izmeklēšanas princips Administratīvā procesa likumā, "Likums un tiesības" 6(46) 2003, p. 179.
[3] Civil procedure law. Law of Republic of Latvia. October 14, 1998, in effect since 03.01.1999, Latvijas Vēstnesis No. 326/330.

submitted by the parties and other participants in the case. If it is not possible for the parties or other participants in the case to provide evidence, the court will ask for it on their motivated request.

The cited legal norms seem to briefly and concretely describe what evidence is and who has the burden of proof. However, the Civil Procedure Law does not contain guidelines from which the parties and other participants in the case could at least approximately conclude at which point the evidence presented by them is considered sufficient and confirms what they claim. Systematically translating the regulation contained in the Civil Procedure Law, it can be concluded that most likely these steps can be connected with the moment of the judge's inner conviction. At this point, the question of what the judge should be confident about becomes important. Describing the essence of proof in civil proceedings, Latvian legal scholar Dr.iur. D. Ose points out that "a characteristic element of the process in civil proceedings is the competition between the parties to a civil dispute, in which the evidence is aimed at clarifying important legal facts in the case only within the limits set by the subject of evidence"[4]. It is important to note that the civil procedural protection of a civil dispute is endowed with great dispositiveness. It is recognized in the scientific literature that "the principle of dispositiveness in the legal proceedings of a claim means the legally established opportunities for the parties to deal with their substantive and procedural rights and their means of protection according to their subjective views"[5]. The autonomy of the will of the parties to a civil legal relationship significantly affects the formation and determination of the subject of proof, which results from the basis and subject of the claim. The subject and basis of the claim are chosen and reflected in the claim application by the claimant, but the objections to the claim are chosen and notified to the court by the defendant. In each of the cases, the parties to the dispute independently formulate claims and objections, linking them to specific facts and circumstances of reality, which they think justify and confirm the claims and objections. These elements also formed the subject of proof in civil cases. From the above, it can be concluded that the internal conviction of the judge must be directly about the facts and circumstances announced by the parties, but more specifically about the fact that these facts and circumstances are true. "The crucial importance is not the number of evidence, their absolutely or mathematically exact correspondence to the facts to be proven, but the court's conviction about the existence or non-existence of the fact indicated by the party"[6].

The above-mentioned seems to be especially relevant in cases where both the claimant and the defendant have presented admissible, relevant and prima facie reliable evidence that proves what they claim, simultaneously refuting the evidence of the other side. The above is undeniably related to the sufficiency of the evidence and the correct evaluation of the evidence (by determining the reliability of the evidence in the case, as well as the sufficiency) performed

[4] D. Ose, Pierādīšanas process un tā izņēmumi civilprocesā, Jurista vārds, 15.12.2015 /Nr. 49(901), https://juristavards.lv/doc/267763- pieradisanas-process-un-ta-iznemumi-civilprocesa/#ats_2 (15.12.2022).
[5] A. Līcis, Prasības tiesvedība un pierādījumi, Rīga 2003, p. 56.
[6] Ibidem, p. 66.

by the court. According to the first part of Article 97 of the Law on Civil Procedure, the court evaluates the evidence based on its internal conviction, which is based on comprehensively, completely, and objectively verified evidence at the court hearing, guided by legal awareness based on the laws of logic, scientific knowledge, and observations gained in life. The second part of this article stipulates that no evidence has a predetermined force that binds the court. The third part of Article 97 of the Law on Civil Procedure stipulates that the court must indicate in its judgment why it preferred one piece of evidence over another piece of evidence and recognized some facts as proven and others as unproven. Generally, it follows that with respect to the standard of familiarity in civil cases, this judicial discretion should, as a general rule, be relative, not absolute. Of course, there are special exceptions to this general rule in civil proceedings, but their review is beyond the scope of this article.

All that remains is the question of the reliability of the evidence criterion. Legal scholar Dr.iur. Daina Ose, referring to the words of Professor Vladimir Bukovsky, rightly points out that the process is a battle between two parties, in which the one who proves his rightness in front of the court with the help of the presented evidence wins. So, the party whose evidence is more reliable and whose arguments are more convincing will be right[7]. Regarding actual presumptions, the jurist states that the reliability of the presumption exists until the moment when the party to the civil dispute submits evidence to the contrary. Regarding legal presumptions, the legal expert concludes that the legal presumptions contained in the material norms are appealed (by filing a lawsuit in court), disputing the assumption and proving the opposite with evidence of the existence or non-existence of the relevant facts, while the civil procedural presumptions are replaced by the presumption of the opposite assumption (reverse presumption), which is valid until rebutted by evidence to the contrary[8]. In the doctrine of foreign law, similar to the above, it is indicated that in a civil case, the party bearing the burden of proof must prove that the existence or non-existence of facts is more likely[9]. From which it can be concluded that the degree of conviction (as well as persuasion) of the court can also be different for different categories of cases.

At the discretion of the author of the article, studying the evaluation of evidence in the context of Article 97 of the Law on Civil Procedure, it should be pointed out that the requirement in the Article regarding the evaluation of evidence in full requires the need to use and study the evidence to the extent that is sufficient for making true conclusions, when there are no doubts about the grounds of the decision. Like any other procedural institution, the purpose of the right of evidence is to ensure that the court makes a substantively correct decision[10]. It is indisputable that the duty of the court is to find out the factual circumstances of the case;

[7] D. Ose, Pierādījumi un pierādīšana civilprocesā, Promocijas darbs, Defended doctoral thesis, Rīga, 2013. http://dspace.lu.lv/dspace/bitstream/handle/7/5139/23437-Daina_Ose_2013.pdf?sequence=1&isAllowed=y (15.12.2022).
[8] Ibidem.
[9] R. Munday, Evidence, Third Edition, Oxford University Press 2005, 68.p.
[10] A. Baumbach, W. Lauterbach, J. Albers, P. Hartmann, Kommentar zur ZPO. 65 Auflage, Munich 2007, § 284. Rn. 2.

however, this does not mean that there is a principle of judicial investigation in Latvian civil proceedings, which limits competition, dispositiveness, and other procedural principles. Article 8 of the Latvia Civil Procedure Law obliges the court to clarify the circumstances of the case, but this can only be done with the procedural means and procedure established by the law. Namely, the court's conclusions in the judgment must correspond only to those facts that have been established in the case with the help of the parties' obligation to acquaint them, but the correspondence of these facts to the objective true reality is ensured through the obligation to express the truth, provided for in Article 9 of the Civil Procedure Law, which stipulates that the parties, third parties and the representatives, on behalf of the represented, provide the court with true information about the facts and circumstances of the case, as well as introduced civil procedural sanctions in Article 73 of the Civil Procedure Law for failure to fulfill this obligation. Confirmation of this position can also be found in Latvian judicial practice: "according to a general rule, since the state itself is not interested in who will win the dispute between two parties and since society is only interested in the just side winning, then it follows from this that the public interest gives the parties complete equal rights (according to the context – equal rights in proof – note of the author of the article), among other things, by providing for the court's obligation to give an opportunity to the opposing party to express themselves, which guarantees the justice and correctness of the judgment"[11].

These are also in line with European jurisprudence. The jurisprudence of the European Court of Human Rights emphasizes that the right to a fair trial, which is guaranteed by Article 6, Paragraph 1 of the Convention[12], also includes the right of the parties to present any kind of consideration that they consider important in the case. Therefore, it can be invoked by anyone who believes that there has been an unlawful interference with the exercise of his civil rights. In the sense of this article, one of the elements of the broader concept of "fair trial" is the principle of equality of the parties, which requires a "fair balance" between the parties. Namely, each party is provided with reasonable opportunities to present its case under conditions that do not put it in a significantly worse position compared to the other party[13]. This includes the possibility of the parties to comment on all the considerations presented, in order to influence the court's decision, because the purpose of the Convention is to guarantee not theoretical or illusory, but practical and effective rights[14].

From the above, it can be concluded that in accordance with the regulation of the Civil Procedure Law and the findings expressed in legal science, the general standard of proof in civil

[11] Judgment of the Department of Civil Affairs of the Senate of the Republic of Latvia of January 27, 2022, Case No. C69332520, SKC-175/2022.
[12] Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4.XI.1950, https://www.echr.coe.int/documents/convention_eng.pdf.
[13] See for example: The judgment of the European Court of Human Rights in case No. 62543/00 "Gorraiz Lizarraga and Others v. Spain", paragraph 56; judgment of the European Court of Human Rights in case No. 35376/97 "Krčm and Others v. Czech Republic", par. 39.
[14] See for example: The judgment of the European Court of Human Rights of March 27, 1998 in the case "J.J. v. Netherlands" paragraph 43; judgment of January 11, 2000 in case No. 28168/95 "Quadrelli v. Italy", par. 34.

procedural law has been reached at the moment when the court has recognized a fact as more proven than unproven, disproved, or otherwise presumed. In other words, in general civil procedure law, a preponderance of evidence is required over the evidence presented by the opposing party or another interested party, but if there is no such evidence, clear and convincing evidence is required, so that the court could determine the existence or non-existence of some facts that are important in deciding the case. It should be noted that in civil procedural law, a different division of the burden of proof is often found - the burden of proof is fully imposed on one party (for example, Article 125 of the Labor Law of Latvia[15]), the reverse burden of proof (for example, the third and fourth parts of Article 169 of the Commercial Law of Latvia[16]), the evidence is considered sufficient by establishing the possible probable cause (for example, Article 250[57] of the Civil Procedure Law of Latvia), etc. However, even in these cases, unless the decision on the case is objectively urgent (for example, in cases of temporary protection against violence), clear, reliable, verifiable, and convincing evidence is most often required.

In administrative process law, unlike civil procedural law, the burden of proof is basically imposed on the institution, which is based on the principle of objective investigation. The law of administrative process determines the way in which the state administration may act against an individual in a specific case and what is the individual's right to verify the legality of this state administration's actions in an independent court[17]. The administrative process in the court is essentially expressis verbis defined in the Administrative Process Law, Article 103, first part: The substance of administrative proceedings in court shall be the court control over the lawfulness of an administrative act issued by an institution or actual action of an institution or the considerations of usefulness within the scope of discretionary powers, and also the determination of public legal obligations or rights of a private person and the examination of disputes arising from a contract governed by public law[18].

In the Administrative Procedure Law the principle of objective investigation is reflected in the second part of Article 103 and the fourth part of Article 107, as well as in the fourth part of Article 150. It follows from the mentioned legal norms that the principle of objective investigation foresees the duty of the court to find the objective truth within the case and to ensure the sufficiency of the evidence, regardless of whether or not the participants in the process have informed the court about all the circumstances relevant to the correct judgment of the case and whether or not they have provided enough evidence[19]. The aforementioned is also in line with the Law on Judiciary, which determines the duty of the court to find the objective truth in the case.

[15] Labour Law. Law of Republic of Latvia. June 20, 2001. in effect since 01.06.2002. Latvijas Vēstnesis, 105.
[16] Commercial Law. Law of Republic of Latvia. April 13, 2000. in effect since 01.01.2002. Latvijas Vēstnesis, 158/160.
[17] E. Levits, Par administratīvā procesa vietu un funkcijām Latvijas tiesību sistēmā. Jurista vārds., 1998, 19 marts, Nr. 10/11 (78/79).
[18] Administrative Process Law. Law of Republic of Latvia. October 25, 2001. in effect since 02.01.2004. Latvijas Vēstnesis No. 164.
[19] The Supreme Court of the Republic of Latvia Generalization of case law: Principle of objective investigation – Interpretation and application. 2005, p. 5.[Objektīvās izmeklēšanas princips – interpretācija un piemērošana. Tiesu prakses vispārinājums.]

According to the first part of Article 150 of the Law on Administrative Procedure, the institution must prove the circumstances to which it refers as the basis of its objections. Article 149 of the Law on Administrative Procedure stipulates that evidence in an administrative case is information about the facts on which the claims and objections of the participants in the administrative process are based, as well as information about other facts that are important in judging the case. In the law of administrative procedure, unlike the law of civil procedure, the leading principle is the principle of objective investigation, or inquisition[20]. In the jurisprudence of objective investigation, one of its basic dimensions is characterized as follows: Once the case has reached the court, then regardless of the participants in the case, the court can also check the legality of the state administration. Therefore, unlike the civil process, if the trial has started, then the court is charged with the responsibility of collecting all the necessary evidence and making the right decision in the case[21]. The importance of this principle in determining the standard of proof is essential, because the court also participates in identification of sources of evidence, search, and collection of evidence, i.e. investigation of the case. In the opinion of the authors, the functions of the court of first instance and appeal are peculiarly similar to the functions of the investigative body in pre-trial criminal proceedings, the implementation of which is also dominated by the principle of inquisition.

The second part of Article 103 of the Law on Administrative Procedure[22] stipulates that the court in the administrative procedure, fulfilling its duties, objectively ascertains the circumstances of the case itself (*ex officio*) and gives them a legal assessment, examining the case within a reasonable time. According to the fourth part of Article 107 of the Law on Administrative Procedure, in order to clarify the true circumstances of the case within the limits of the claim and to achieve a legal and fair examination of the case, the court gives instructions and recommendations to the participants of the administrative procedure, and collects evidence on its own initiative (principle of objective investigation).

The beginning of the implementation of the principle of objective investigation and the impact on the burden of proof are characterized by the third and fourth parts of Article 150 of the Law on Administrative Procedure. According to the third part of this article, the applicant must participate in the collection of evidence according to his ability. However, the fourth part of the mentioned article stipulates that if the evidence presented by the participants in the administrative process is insufficient, the court collects it on its own initiative.

It follows from the above that in the administrative process the burden of proof is basically imposed on the institution, but the applicant must also participate in the collection of evidence (not providing directly or persuading the court). If the evidence in the case is not sufficient to establish the objective truth, the court collects it on its own initiative.

[20] J.Briedes (ed.), Administratīvais process tiesā, Rīga: Latvijas Vēstnesis 2008, p. 266.
[21] Ibidem.
[22] Administrative procedure law. Law of Republic of Latvia. October 25, 2001. in effect since 02.01.2004. Latvijas Vēstnesis No. 164.

In accordance with the second part of Article 250 of the Law on Administrative Procedure, the court, when assessing the legality of an administrative act, takes into account only the grounds included in the administrative act by the institution. (In the Civil Procedure Law, a conditionally similar principle is incorporated in Article 192, according to which the court renders a judgment on the subject of the claim specified in the claim and on the basis specified in the claim, without exceeding the limits of the claim.). There is no race principle here. If the institution justified the administrative act with A, B, C, it will not be able to refer to the grounds D, E, F in court, if it was not included in the administrative act[23]. The limitation mentioned does not apply to cases in which the claim is the issuance of a favorable administrative act. Also, the court is not empowered to intervene in the competence of the institution and to decide on its own the issues that must be initially evaluated and decided by the specific competent state administrative institution. The task of the administrative court is to control the legality of the decisions and actions of the state administrative institution, not to stand in the place of the institution, and to decide issues falling within the competence of the institution[24]. In some cases, it can be recognized that in fact some norm was appropriate, even if it was not mentioned in the decision. However, the interpretation of such a justification must not include a fundamentally new justification, replacing the justification already included in the administrative act. Otherwise, the court would essentially assume the competence of the institution to issue and justify the administrative act[25].

The principle of justification is also related to Article 92 of the Constitution[26], which stipulates that everyone can defend their rights and legitimate interests in a fair court. Reasoning has the function of explaining and proving[27]. This allows an individual to conclude whether he can challenge or appeal the specific administrative act[28]. Reasoning fulfills the function of protecting rights, especially if the institution is granted freedom of action in relation to issuance of an administrative act and/or its content.

The purpose of the objective investigation is to ensure that the true circumstances of the case are clarified during the case review and a legal and fair result is achieved[29]. The objective truth and ensuring the sufficiency of the evidence, regardless of whether the participants in the process have informed the court about all the circumstances essential for the correct decision of the case and whether they have provided enough evidence. The court is obliged to ensure

[23] N. Salenieks, Par administratīvo procesu tiesā. Jurista Vārds, 1998. gada 19. marts, Nr. 10/11.
[24] Judgment of the Department of Administrative Affairs of the Senate of the Republic of Latvia of October 18, 2019 No. SKA-42/2019 (A420249614).
[25] Judgment of the Administrative Affairs Department of the Senate of the Republic of Latvia of July 5, 2019 in case No. A420157717, SKA-591/2019.
[26] The Constitution of Republic of Latvia. Law of Republic of Latvia. Febryary 15, 1922. in effect since 11.07.1922. Latvijas Vēstnesis No. 43.
[27] F.J. Paine, Vācijas vispārīgās administratīvās tiesības, Rīga 2002, p. 181, 182
[28] J. Briede, Administratīvā akta forma un sastāvdaļas: Administratīvā procesa likuma 67.pants. Jurista Vārds, 2004, 17 februāris, Nr. 6(311).
[29] I. Višķere, S. Savina, Administratīvā akta pamatojuma maiņas aizliegums. Jurista Vārds, 15.12.2020., Nr. 50(1160), pp. 15-18.

that the evidence collected in the case is sufficient so that the court has complete and reliable information it needs to verify the legality of the administrative act when examining the case. The Senate of the Supreme Court of the Republic of Latvia has recognized that the court has an obligation to collect evidence itself, if otherwise it is not possible to clarify the true circumstances of the case or to eliminate contradictions in the evidence in the case[30]. Whether the evidence provided by the participants in the process is sufficient to reveal the objective truth in the case must be determined by the court itself. If it is not enough to clarify the circumstances of the case with the help of the participants in the process, the court itself must use the opportunities granted to it by law and find evidence that confirms the true circumstances of the case[31]. The purpose of the court's control is, by evaluating the nature of the applicant's objections, to find out whether there is an objective basis for the establishment of the specific legal relationship established by the institution, and not just to check whether the institution has sufficiently skillfully presented its considerations in the decision. Therefore, the legislator, enlivening the principle of objective investigation, has provided that the court, when examining the case, must ensure that all the circumstances relevant to the judgment of the case have been clarified and that all the evidence necessary for the judgment of the case has been obtained, not only those to which the institution has directly referred in the administrative act[32].

When looking at the general standard of proof, or the limit of the burden of proof in the administrative process, it is necessary to correctly assess the evidence as sufficient. The Administrative Procedure Law, like the Civil Procedure Law, does not contain evidence sufficiency guidelines; however, this follows from the regulation of Article 154 of the Administrative Procedure Law. The first part of Article 154 of the Law on Administrative Procedure provides that the court evaluates the evidence according to its internal conviction, which is based on comprehensively, completely and objectively verified evidence, as well as being guided by legal awareness based on the laws of logic, scientific knowledge, and principles of justice. The second part of the article includes the principle of equal force of evidence: "No evidence has a predetermined force that binds the court." According to the third part of the mentioned article, the court shall state in its judgment why it preferred one piece of evidence over another piece of evidence and recognized one fact as proven and another as unproven.

The legal doctrine recognizes that the sufficiency of the evidence should be understood as the evidence presented, which gives the court an unquestionable conviction about the existence or non-existence of the factual circumstance[33]. Thus, the sufficiency of the evidence is determined not by its number, form, content, or other characteristics, but by the conviction of

[30] Judgment of the Administrative Affairs Department of the Senate of the Republic of Latvia of August 30, 2005 in case No. SKA-207.
[31] Judgment of the Administrative Affairs Department of the Senate of the Republic of Latvia of May 10, 2005 in case No. SKA-116.
[32] I. Višķere, S. Savina, Administratīvā akta pamatojuma maiņas aizliegums. Jurista Vārds, 15.12.2020., Nr. 50 (1160), pp. 15-18.
[33] J.Briedes (ed.), Administratīvais process tiesā, Rīga 2008, p. 310.

the court. Evidence is not sufficient if it is contradictory, as it cannot create a correct, objectively realistic picture of the actual circumstances. The evidence is not sufficient even if the legal means of proof are not chosen to prove the actual circumstances[34].

From the above, it can be concluded that, in general, in the administrative process, unlike the civil process, it is not enough for the institution to justify the administrative act, the actual action and other actions of the institution, only the preponderance of the evidence over the applicant's evidence or presumptions, clear and convincing evidence is needed. However, even this standard of proof may not be sufficient, especially for justifying an administrative act unfavorable to the addressee/applicant or a third party.

In administrative process law, the standard of proof is significantly raised by the principle *in dubio pro civis* (doubt in favor of the person) applied in public administration, which is related to the principle *in dubio pro reo* (doubt in favor of the accused), which in turn derives from the basic principle of criminal proceedings – the presumption of innocence[35]. The principle of *in dubio pro civis* is related to the principle of respecting the rights of a private person and means that the institution, when deciding on the issuing of an administrative act unfavorable to a private person, and the court controlling it, in case of justified doubts, must interpret them in favor of the individual. Reasonable doubts in the context of the in dubio pro civis principle do not mean any doubts, but rather those that are focused on decisive aspects of the case, and which cannot be removed during the course of the case, by clarifying and evaluating all the essential factual and legal circumstances of the case[36].

From the above, it can be concluded that in general, the burden of proof imposed on the institution in the administrative process is much higher than that of the party in the civil process, that is, the standard of proof is the exclusion of reasonable doubts about the legality of the administrative act, actual action, or other action issued by the institution, and the conformity of its justification with reality. The institution must convince the court beyond reasonable doubt with evidence that its action was legal and justified.

Similarly to the civil process, also in the administrative process, the special legal norms regulating certain branches of the state administration may contain exceptions from the general obligation of proof and the resulting standard of proof.

The highest standard of proof exists in the process of administrative violations and criminal proceedings – beyond reasonable doubt.

In judicial practice in criminal proceedings, there are practically no contradictions with regard to the burden of proof and the standard of proof. This is one of the most ambiguously understood legal issues in the process of administrative violations, especially in judicial practice. The standard of proof "beyond a reasonable doubt" in the procedural law of administrative violations is borrowed

[34] Ibidem.
[35] J.Briedes (ed.), Administratīvā procesa likuma komentāri. A un B daļa, Rīga 2013, p. 121.
[36] Ibidem.

from the "big brother" of this process – the criminal process, because in both of these processes one of the basic principles is the principle of presumption of innocence.

It is important to highlight the differences between administrative infringement (violations) proceedings and criminal proceedings. The process of administrative violations covers the application of liability for administrative violations. The concept of an administrative offense is provided by the Administrative Liability Law[37], providing in Article 2 that An administrative offense is an unlawful culpable action (an act or failure to act) of a person for which administrative liability is provided for in a law or binding regulations of local governments. The words "is provided for in a law" mean regulatory acts other than the Criminal Law. Consequently, the criminal process covers the application of responsibility for criminal offenses/violations (defined in the Criminal Law). These two processes are examined together within the framework of the article, because the mechanism of application of responsibility is very similar, but in some cases, the repetition of an administrative violation or the extent of the damage caused moves the victim to criminal offenses. It should also be noted that, according to the judicial system of Latvia, if a pre-trial decision in the process of administrative violations is appealed, the branch of the judiciary that deals with criminal cases will examine the case.

The ambiguous understanding of the standard of proof in the process of administrative violations may initially have arisen from the fact that the procedural and substantive rights of administrative violations are undergoing a grand transformation, caused by such judgments of the European Court of Human Rights as in the cases of Segrey Zolotukhin v. Russia (Segrey Zolotukhin v. Russia No. 14939/03), Pfarrmeier v. Austria (Pfarrmeier v. Austria No. 16841/90), Engel and Others v. The Netherlands No. 5100/71; 5101/71; 5102/71; 5354/72; 5370/ 72), etc. According to the mentioned judgments, the European Court of Human Rights (hereinafter – the ECHR) convincingly recognizes the administrative violation as a criminal offense within the meaning of the ECHR, and the cases of administrative violations – as "minor criminal cases", which ensure all the standards of protection and proof of personal rights, as defined by the European Court of Human Rights and Protection of Fundamental Freedoms the convention[38] (hereinafter – ECHR) guarantees in criminal proceedings. The findings expressed in the rulings of the ECHR are also joined by the Constitutional Court in judgments in cases, such as no. 2001-17-0106, 2008-04-01, 2012-15-01, 2013-12-01, etc. The ambiguity in understanding the legal framework is also related to the fact that the process of administrative violations (bookkeeping) continues until 14.06.2012. The adopted amendments were initially perceived as a special administrative process, which was considered by administrative courts, applying the provisions of the Administrative Procedure Law in addition to the regulation of the Administrative Procedure Act and the general principles of administrative procedure law,

[37] Administrative Liability Law. Law of Republic of Latvia. October 25, 2018. in effect since 01.07.2020. Latvijas vēstnesis, 225.
[38] European Convention on Human Rights. International Convention. November 4.,1950., in effect in Republic of Latvia since 06.27.1997. Latvijas Vēstnesis No. 143/144.

including the principle of *in dubio pro civis*, not *in dubio pro reo*, which is included in the legal definitions of the presumption of innocence.

The second sentence of Article 92 of the Constitution of the Republic of Latvia[39] provides that everyone is considered innocent until his guilt is recognized according to the law.

According to Article 6 (2) of the European Convention on Human Rights, anyone accused of a criminal offense is presumed innocent until the guilt is proven according to law. The first part of Article 23 of the Law "On Judicial Power"[40] (hereinafter – LPJ) stipulates that no one can be found guilty of committing a criminal offense until his guilt has been recognized in accordance with the law. The second part of Article 23 of the LPJ stipulates that the defendant does not have to prove his innocence. According to the third part of this article, the court must evaluate all doubts about the defendant's guilt in favor of the defendant. The Criminal Procedure Law[41] also contains guidelines for the principle of the presumption of innocence. The first part of Article 19 of this law stipulates that no person shall be considered guilty until his guilt in committing a criminal offense is established in accordance with the procedures specified in this law. The second part of Article 19 of the Law on Criminal Procedure provides that a person who has the right to defense does not have to prove his innocence. The third part of Article 19 of the Law on Criminal Procedure, similar to the regulation of the third part of Article 23 of the Criminal Procedure Code, contains an element of the standard of proof – all reasonable doubts about guilt that cannot be eliminated must be evaluated in favor of the person who has the right to defense. The fifth part of Article 124 of the Law on Criminal Procedure stipulates that the circumstances included in the subject of proof shall be considered proven, if any reasonable doubts about their existence or non-existence are excluded during the proof. The Law on Administrative Responsibility established that the burden of proof in the process of an administrative violation lies with the official and in court with the institution. On the other hand, the second part of Article 126 of the Law on Criminal Procedure stipulates that the burden of proof in pre-trial criminal proceedings rests with the claimant, but in court – with the prosecutor.

Despite the fact that a relatively long time has passed since the amendments in the examination of administrative violations, even in the practice of the courts of general jurisdiction, to which the examination of administrative violation cases was transferred with the entry into force of the amendments, contradictions arise regarding the standard of proof in cases of administrative violations. The existence of the above-mentioned contradictions in cases of administrative violations is clearly characterized by two judgments of courts of general jurisdiction, adopted in the same period. Vidzeme Suburb Court of Riga city in judgment in case no. 130062316[42] rightly recognizing the person held to administrative responsibility as innocent,

[39] The Constitution of Republic of Latvia. Law of Republic of Latvia. Febryary 15, 1922. in effect since 11.07.1922. Latvijas Vēstnesis No. 43.
[40] Law "On Judicial Power". Law of Republic of Latvia. December 15, 1992., in effect since 01.01.1993. Ziņotājs No. 1/2.
[41] Criminal procedure law. Law of Republic of Latvia. April 21, 2005. in effect since 10.01.2005. Latvijas Vēstnesis No. 74.
[42] Rīgas pilsētas Vidzemes priekšpilsētas tiesas 30.06.2016. spriedums lietā Nr. 130062316.

referring to the judgment of the Administrative District Court in case no. P129022608expressing the opinion that  indicates: "[...] that in cases where it is decided to punish a person, the principle is applied that reasonable doubts are interpreted in favor of the person who is called to the responsibility and punishment prescribed by law (*in dubio pro civis*)"[43]. So, the court, referring to the judgment of the Administrative District Court, which was passed before the first stage of the law reform of the administrative violations process and 14.06.2012. amendments, applied a lower standard of proof (reasonable doubt) in the case compared to the element of presumption of innocence – beyond reasonable doubt, and applied the principle *in dubio pro civis*, instead of the principle *in dubio pro reo*.

The Constitutional Court has recognized that cases of administrative violations are comparable to criminal cases[44]. Consequently, the application of the presumption of innocence in criminal cases is justified. For example, in the judgment of the Kurzeme Regional Court Criminal Court panel in case No. 120008116[16], the following was recognized: "[…] when deciding the question of the offender's guilt, the presumption of innocence must be observed - no one can be found guilty of committing an administrative violation and punished until his guilt has been proven in accordance with the procedures established by law, and all doubts about guilt that cannot be eliminated must be evaluated in favor of the individual (to the violator)." In this judgment, the court has applied both the standard of proof – beyond all (reasonable) doubt and the in *dubio pro reo* principle, and the principle of presumption of innocence, from which the above derives.

The reference to *in dubio pro civis* in the judgment of the Riga city Vidzeme suburb court does not change anything in the specific case, because the judge evaluated the evidence objectively and an innocent person was not found guilty due to this detail. In practice, however, there is a significant difference between *in dubio pro civis* and (any) reasonable doubt, and *in dubio pro reo* with only (any) reasonable doubt. The improper application of these standards can lead to wrongful convictions and convictions of innocent people.

The mentioned "dispute" between the findings of judicial practice, as often happens, is decided by the ECHR. Namely, the ECHR consistently points to the standard of *proof beyond any reasonable doubts* in all criminal and quasi-criminal matters.

In the judgment of the ECHR in the case Geerings v. the Netherlands (Geerings v. the Netherlands No. 30810/03) in paragraph 47, it is stated: "If it is not established beyond reasonable doubt that the person involved has actually committed a crime and cannot be established as a fact, that any advantage, illegal or otherwise, was actually obtained, such a method can only be based on a presumption of guilt. It can hardly be considered compatible with the second part of Article 6 of the [ECHR]"[45].

[43] Kurzemes apgabaltiesas Krimināllietu tiesas kolēģijas 13.06.2016. spriedums lietā Nr.120008116.
[44] Judgment of the Constitutional Court of Latvia of June 20, 2002 in case No. 2001-17-0106.
[45] European Court of Human Rights 01.03.2007. judgment in a case Geerings v. the Netherlands No. 30810/03.

In the case of O'Halloran and Francis v. the United Kingdom (O'Halloran and Francis v. the United Kingdom No. 15809/02 and 25624/02), in paragraph 60 of the judgment, the ECHR clearly indicates the prosecution's burden of proof: "The prosecution must prove a violation beyond a reasonable doubt in an ordinary process, including protection against the use of unreliable evidence and the use of evidence obtained by suppression or other improper means […]"[46].

In the judgment of the ECHR in Barbera, Messegué and Jabardo v. Spain (Barberà, Messegué and Jabardo v. Spain No. 10590/83), the ECHR recognized that: "The principle of the presumption of innocence requires, inter alia (among other things), that, in the performance of their duties, members of a court would not start with a preconceived idea that the accused committed the incriminated offense; the burden of proof is on the prosecution, and any doubt should be given to the accused[...]"[47].

In conclusion, drawing conclusions about the burden of proof both in the process of administrative violations and in criminal proceedings, a peculiar judgment is indicated, in which the Administrative District Court recognized as permissible the application of the norms of the Criminal Procedure Law by analogy in cases of administrative violations.

The administrative district court in the judgment in case no. 142283512[48] states the following: "Therefore, high requirements must be set for the actions of the officials, clarifying the circumstances of the case and recording them in documents, collecting other evidence. If the evidence in the case of an administrative violation is not complete and objective, they do not timely and comprehensively record the circumstances of the violation, they cannot serve as a basis for calling a person to administrative responsibility. It should be taken into account that, according to the judgments of the European Court of Human Rights, administrative violation cases, by their nature and the nature of the punishment, can be assessed as "minor criminal cases" (see the judgment of the European Court of Human Rights of February 10, 2009 in the case of Sergey Zolotukhin v. Russia; see also Constitution court judgment of June 20, 2002 in case No. 2001-17-0106, subsection 6.1)[49]. Therefore, the standard of proof in an administrative violation case must be high and equated with the general principles and rules of proof of the criminal process. Thus, it can be concluded that in cases of administrative violations, the principle of presumption of innocence established in Article 19 of the Law on Criminal Procedure must be observed, which, among other things, determines that all reasonable doubts about guilt, which cannot be eliminated, must be evaluated in favor of the person who has the right to defense. When evaluating evidence in cases of administrative violations, the provisions of Chapter 9 of the Law on Criminal Procedure in the part on proof shall also be applied. According to the provisions of the fifth part of Article 124 of the Law on Criminal Procedure, the circumstances

[46] European Court of Human Rights 29.06.2007. judgment in a case O'Halloran and Francis v. the United Kingdom No. 15809/02 and 25624/02.
[47] European Court of Human Rights 06.12.1988. judgment in a case Barberà, Messegué and Jabardo v. Spain No. 10590/83.
[48] Administratīvās rajona tiesas 23.01.2013. spriedums lietā Nr. 142283512.
[49] Ibidem.

included in the subject of proof shall be considered proven if any reasonable doubts about their existence or non-existence are excluded during the proof. Therefore, the basis for drawing a conclusion about a person's guilt can only be direct and indisputable evidence of the person's illegal actions and also the person's subjective attitude towards the harmfulness of these actions"[50].

It follows from the above that the standard of proof is the highest in criminal cases and cases of administrative violations, determined as "minor criminal cases". Namely, the prosecutor in court (prosecutor in criminal proceedings, institution in proceedings of administrative violations) must prove beyond all (and any) reasonable doubt that the accused (or the person who is called to administrative responsibility) is guilty of the criminal offense charged against him in an offense or an administrative violation. In cases of administrative violations, the burden of proof imposed on the institution by the legislator is not fulfilled with only the elimination of reasonable doubts. The author compares the fulfillment of this duty to a thermometer with a maximum reading of 100ºC, and reaching the 99ºC mark still means that one of the elements of the criminal offense or administrative offense charged against the person has not been fully proven, so there is reasonable doubt about the person's guilt, and causally the person is not guilty.

Regarding the legal presumptions of facts, jurist Irena Nestrova, while evaluating the obligation to rebut presumptions, draws attention to what is stated in the doctrine of foreign law, that a person's guilt must be proven according to the standard of proof "beyond a reasonable doubt", but in the event that the burden of proof is transferred to the person, the standard of proof is "balance of probabilities" or "preponderance of probabilities". Latvian legal scholar K. Strada-Rozenberga points out that such a division is justified by choosing to use the concept of "predominance of possibility"[51]. The author agrees with the aforementioned opinions of legal experts.

## CONCLUSIONS

The research hypothesis has been confirmed. Summarizing what the article says, it should be noted that by comparing the considered elements, it can be concluded that similar elements are clearly visible in all procedural directions regarding the substantive part of the standard of proof, and in the opinion of the authors of the article, a situation where these similar elements are defined or interpreted differently is not permissible. Consistency and similarity should be observed in this regard. It is necessary to create and establish common guidelines for determining the standard of proof and the formulation of basic concepts in procedural regulatory acts. However, the situation in which the understanding of the boundaries of the substantive side (part) of the standard of proof can differ and, in fact, is different in each of the

[50] Ibidem.

[51] I. Ņestrova, *Tiesības sevi neapsūdzēt kriminālprocesā. Right against self-incrimination in criminal proceedings* Promotion paper. Defended doctoral thesis, Riga 2013, https://dspace.lu.lv/dspace/bitstream/handle/7/5200/34504-Promocijas_darbs_IrenaNesterova_08112013.pdf?sequence=1&isAllowed=y (15.12.2022).

procedural directions is completely justified. Such a situation is justified by the specifics of the purpose of proof in each of the processes.

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