PROOFING AND EVIDENCE IN LITIGATION PROCEDURES IN THE REPUBLIC OF NORTH MACEDONIA WITH SPECIAL OVERVIEW ON PROPERTY-LEGAL RELATIONS

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ABSTRACT

Proofing in the procedure of litigation represents all actions of the court and parties taken with the aim of establishing the truth of a particular fact which is the subject of proofing. Proofing includes all the facts which are important in the given procedure for bringing a decision, as well as several important issues related to the type, proofing strength and admissibility of the evidence. It is the duty of the court to establish all relevant disputable legal facts in a truthful and a complete manner. The court may determine on the basis of which the truth of a fact is established by a direct sensory observation, statement of individuals, organs or organizations by expressions in written text. The matters and persons with whom the court acquires knowledge are called evidence. The subject of this paper is an analysis of evidence in property relations under the Civil Procedure Code of RNM. In this paper we will try to explain the manner of presenting evidence in litigation procedures in RNM courts.

Keywords: Evidence, Proofing, Property Relations, Litigation procedure, Republic of North Macedonia

I INTRODUCTION

Proofing (*argumentatio*) is the activity procedure of litigated parties and the court that is undertaken in the lawsuit in regards of complete and correct establishment of the condition of matters. In the process of proofing, truthfulness of the relevant facts of the dispute is being checked, respectively the existence of certain facts, which the court is taking into consideration upon official duty, is being checked. Proofing as a method is including: propositions of the parties for presentation of evidence, decision of the court what evidence should be presented, bidding of evidence by the parties and their acquirement by the court, presentation of evidence and evaluation of the evidence done by the court. Evaluation of the evidence is the final element of proofing, because application of the appropriate legal norm application depends on it.[1] During presentation of every proof, the principle of material truth is dominating and it is the basic duty of the court to ascertain the truth. The most important rule directed towards implementation of the principle of material truth consists of the court evaluates the result of presented evidence in a free manner, upon its own belief. Additionally to the principle of a free evaluation, the rule upon which the court can determine the use of any proofing material, in a case none of the parties hasn't offered it, or against which both parties are opposing, if those proofing materials are important for the decision.[2]
Proofing in the litigation procedure represent all the actions of the court and parties undertaken in the direction of proving the truth of a certain fact, which is the subject of proofing. Also, proofing includes all facts which in the related procedure are important for bringing of the

[1] Stanković G. – Račić R., Parnično procesno pravo, Trebinje, 2008, p. 371.
[2] Rajović V. – Živanović M. – Momčilović R., Građansko procesno pravo, Banja Luka, 2001, p. 90

decision, as well as certain important questions related to the type, proofing strength and admissibility of the evidence.

The initiative for proofing is in the hands of the litigation parties, the court exclusively obliges presentation of certain evidence upon professional duty. The parties are obliged to present facts upon which they base their requests, so they could explain their requests, and offer evidence so they could assure it about the truthfulness of their assertion and enable it to establish the condition of matters in the right manner. It is the duty of the court to establish all relevant disputable legal facts in a truthful and a complete manner. The court may determine on the basis of which the truth of a fact is established by a direct sensory observation, statement of individuals, organs or organizations by expressions in written text. In presentations prior to the main discussion and during the main discussion, before the evidence, the following should be provided: suggestions of the party for presentation of evidence, decision about what evidence should be presented, submission of the parties and gathering of the evidence by the court. After these preparations, presentation of evidence is being done during the main discussion and their evaluation in the final statement of the party. As far as the results of the evidence are concerned, the court during the explanation of the decision concludes the truthfulness of the facts that were the subject of proofing. Matters and individuals through which the court acquires knowledge are called evidence.[3]

Evidence can be divided according to their objective characteristics to: personal and real. Personal evidence is the witnesses, parties and experts. Real evidence is the inspections and documents. A further division of evidence is possible by taking into consideration of their relation towards which they provide certain information, thereby the evidence are divided in the following manner: indirect and direct evidence. Indirect evidence provides direct explanation about a relevant fact (for example: you can see that the tree is cut). Direct evidence is related to the fact that can't be noticed, however, from the existence of a fact, one can come to a conclusion that there is a legal relevant fact[4].

Main evidence is the evidence from which a conclusion is derived about the existence of an important fact, whereas a counter-argument is evidence through which can be proved that the results achieved through realization of the main evidence can't be accepted, as it can't provide creation of a main conclusion of the court. Full evidence is a type of evidence with the characteristics of being able to convince the court in an authentic manner about the truthfulness of a certain factual claim. Full evidence leads towards certitude of a certain fact, whereas the evidence is incomplete when it has the quality that is able to convince the court about a certain fact only up to a level of possibility. The authenticity of a presented claim has to have a logical outcome and in that manner to include the possibility of the truthfulness of another claim. In certain situations, when it is enough to make a certain claim as a true claim, in that situation, the court has the authorization to bring a conclusion about important facts, in a situation when the results of an indicative proofing offer more reasons for convincement that certain facts are existing, rather than non-existing.[5]

II. THE CONCEPT AND TYPES OF EVIDENCE

Evidence (*instrumentum*) is everything that can derive knowledge through a sensory observation about the truthfulness of the existence or the non-existence of a fact which is a

[3] For more, see: Ristić V. – Ristić M., *Praktikum za parnicu*, četvrto izmjenjeno i dopunjeno izdanje, Beograd, 1995, p. 203.
[4] Stanković G. – Račić R. Parnično procesno pravo, Trebinje, 2008, p. 373.
[5] Hamzabegović, Suad, *Dokazivanje u Parnici*, Univerzitetska knjiga, Bihać, 201, p. 111.

direct subject of the proofing. In the scientific-legal polemic regarding evidence, there are some opinions that start from the fact that evidence are not individuals (witnesses, experts, parties), nor objects (documents, inspection objects), but it is the bearers of cognitive materials. According to this opinion, only different process forms of an input of cognitive materials in the process represent evidence in the full meaning of the term. Thereby, the content of a certain document is evidence, whereas the subjects are only facts determined through findings of the processing organ in the role of the bearer of the finding.[6] On the other hand, there is an opinion which considers witnesses, experts and parties as bearers of the finding materials, however they can't relate their opinion for those individuals who, because of the brevity of their expression and previously established manner of the finding, they can be considered as evidence. According to that, it can be said that in the theoretic meaning, it is not right if we consider the statement of a witness or a report of an expert as evidence, having in mind that we are forgetting that these individuals, as complete social beings, with their characteristics and statements, represent a complex set of relevant information, based on which the court decides about the meaning of those information which are presented by the examined person[7]. It means that a certain person, which is in position to prove a certain fact, can also carry its' own imagination, social status, and based on that they can present their own relative conclusions. According to that, we can conclude that evidence, having in mind the content of the document, can't input itself in the process as a cognitive material, because it can be realized only through the fact of documents in front of the court. Thereby, proofing includes all facts which are important for bringing a decision in a certain procedure, as well as few other important matters regarding the type, proofing strength and admissibility of the evidence. It is the duty of the court to establish all relevant disputable legal facts in a truthful and a complete manner. The court may determine on the basis of which the truth of a fact is established by a direct sensory observation, statement of individuals, organs or organizations by expressions in written text.[8]

The proceeding judge also has the possibility, although very rarely, directly to observe the exact fact which is relevant in the procedure, and in that case it is justified in this disputable part to give characteristics of an evidence (*evidentia rei*), having in mind that with its' own existence and characteristics, it proves a fact which, in the litigation, is the relevant work of the performer. The deed by itself, through its' existence, carries the information about the acting of the party which was obliged to perform the act up to a certain quality, respectively the consequence which proves its' own existence by itself.[9]

Generally, there are no limitations of the court in their choice of evidence, and the court isn't exclusively authorized to present evidence through hearing of the litigation parties in the procedure of provision of evidence. The law doesn't explicitly regulate the order of presentation of evidence, with the exception of providing evidence through hearing of parties, which by rule can be conducted when there is no other evidence, or when besides the existing evidence, the court finds it necessary because of verification of certain facts, which are important for the procedure.[10]

[6] Ibid, p. 107.
[7] Ibid, p.108.
[8] As an example, we are mentioning the concept in which *Common Law* legal theoreticians highlight that this term isn't easy to understand for the civil population, as well as legal practitioners who very often define this institution incorrectly, having in mind that the regulations of evidence by hearing are based on certain intuitive predispositions. See: Morgan Edmund, Some Problems of Proof under the Anglo-American System of Litigation, Columbia University Press, New York 1956, p. 141.

[9] Hamzabegović, Suad, *Dokazivanje u Parnici*, Univerzitetska knjiga, Bihać, 2013, p. 109.
[10] Ibid, p.109.

II.1. Evidence in litigation procedures of property relations in the Republic of North Macedonia

The modern ruling theory of free estimation of evidence is in accordance with the general understanding of the democratic society, which weighs towards the truth in all spheres of social life. Legally, the truth is what the court and ruling body come up to through proofing. That truth doesn't have an absolute, but an objective character. Therefore, the truth achieved through these procedures of proofing only represents the highest level of possibility, which can be achieved from the available evidence. Therefore, as a rule, the level of possibility is needed to be accomplished in regards of procedural assumptions, and the facts on which the decisions of the bodies who lead both procedure are relying, are needed to be made as believable as possible.[11] The Law of Litigation procedures of RNM[12] provides the following categories of evidence: Inspection, Documents, Witnesses, Experts, Hearing of parties. Inspection is required only if upon a request of a party, when it confirms the fact or clears the circumstance, a direct review of the court is also needed.[13] Documents in litigation procedures are all objects on which written declaration is imported, an opinion or other similar information that are issued by a government authority or a government directorate, within the limits of their authority.[14] Witnesses are important evidence. They are often the only and most authentic source of information about important facts. The provide to the court to directly communicate with them, by asking questions, their confrontation and interrogation, so a clear image can be provided about what they noticed, and a general and direct image of what is happening through their behaviour, physical look, mood, emotions, declarations etc.[15] An expert is the third person, different from the court and the parties, which is being called by the court on the basis of their professional expertise, gained skill or special experience for a certain finding.[16] When there is no other evidence, or when, despite other presented evidence, there is a need to approve important facts, on a suggestion by a party, the court can establish evidence through hearing of the parties.[17] Confession of facts is not evidence, however it is important for the procedure of removal of evidence. The court can oblige facts to be proven, provided by a party in front of the court, if it considers that the party through its confession is confessing matters that are not in their disposition. Taking all circumstances in consideration, the court will, according to its' convictions, identify whether it will treat it as a given or it will oppose the facts that the party initially confessed, or completely or partially limit the confession by adding other facts.[18] The decision of revealing evidence is brought by the Assembly of litigation court during the main discussion. The Chairman of the Court Assembly also has some particular authorizations during the preparation of the main discussion:

- He can appoint an expert if the parties are not opposing
- He can carry out an inspection outside the court if the parties agree
- He can call for witnesses and experts to the main discussion
- He can ask for collection of facts and subjects that are needed for the main discussion.

However, during the main discussion, the Court assembly will definitely decide about what evidence and in what manner they will be revealed. The presiding judge can accept or not

[11] Triva, Siniša, dr. Velimir Belajec, dr. Mihajlo Dika, *Građansko parnično procesno pravo,* Zagreb, 1986., p. 393.
[12] Закон за парнична постапка, "Службен весник на Република Македонија бр.79/2005, бр.110/08, бр.83/09, бр.116/10, бр.7/11.
[13] Ibid, article 212, paragraph 1.
[14] Ibid, article 215, paragraph 1.
[15] Ibid, articles 220- 234.
[16] Ibid, articles 235-248.
[17] Ibid, articles 249-256.
[18] Kulenović, Zlatko Stjepan Mikulić, Svjetlana Milišić-Veličković, Jadranka Stanišić i Dinka Vučina, *Komentar Zakona o parničnom postupku u Federaciji Bosne i Hercegovine i Republici Srpskoj,* Sarajevo, 2005., str. 223; Radovanov A., *Građansko procesno pravo*, II izmenjeno i dopunjeno izdanje, Pravni fakultet Univerziteta Privredna akademija u Novom Sadu, Novi Sad, 2009, p.154;

accept the evidence. During the decision about revealing evidence, the litigation fact about which evidence materials and means is determined.[19]

The evidence is revealed on the main discussion. The practice showed that some evidence might not be acceptable before the litigation procedure or, if the legal procedure is still in process, they will be significantly obstructed during the main inquest. According to the Law of Litigation procedure of the Republic of North Macedonia, if there is a justified doubt that some evidence will not be possible or their later accomplishment will be difficult to realize, it can be suggested that the evidence to be revealed earlier.

The authorization for revealing evidence during the litigation is in the hands of the court where the legal litigation has been initiated. If an assurance is requested before the process is initiated, or in urgent situations when the procedure is running, the lower court of first degree is authorized on the territory where security matters should be taken into consideration, i.e. the court of the territory where the individual lives. The first degree court decides about any proposals given during the procedure. In the proposal, facts that have to be proven must be listed, evidence that must be revealed and reasons because of which revealing evidence at a later stage will be more difficult or evidence which could not be possible at a later stage. In the proposal, the full name and address of the opponent must be mentioned, except if security reasons are not allowing it.[20]

According to this, the subject of proofing in a litigation procedure are not only facts, but only those facts that are directly important for solving certain topics in the procedure, respectively facts that can influence on solving matters according to the law of litigation procedures. According to the Law of Litigation procedure of RNM, evidence can mainly be classified in the following manner:

II.1a) Inspection

An inspection is a direct sensory observation of the court or the official who is leading the procedure about the characteristics and conditions of objects or individuals. The inspection is the most reliable evidence, because through it, the court is establishing, respectively clarifying the existence or non-existence of a certain fact through a personal observation, with no intermediaries. However, its' application is limited by the fact that only current facts can be proven, which are less likely disputable compared to facts from the past. Also, evident matters usually are not the object of proofing, because there is no dispute about them, therefore the inspection is usually carried out because of review of objects or individuals that are directly relevant for identifying important facts.[21] The court usually identifies disputable facts, but it also gets direct information about facts that are not disputable between the parties and for a legal note about which parties are disputing, there is a need for a direct review of the court or an official that leads the litigation procedure. The inspection is carried out in the court or on the premises of the body that leads the procedure, but if the matter that needs to be reviewed can't be brought to the premises, or its' bringing would cause high expenses, which is very often, the inspection is carried out outside the official premises, on-site.[22]

[19] Zakon o Parnićkom postupku RSM-a, član 263; Георгиевски. С, „Парнична постапка (второ изменето издание)", Правен факултет, Skopje, 1988, p.34.
[20] For more, see: Jakšić, Aleksandar, Građansko procesno pravo, Pravni Fakultet Univerziteta u Beogradu, šesto izdanje, Beograd 2012.
[21] Puriševič, Fuad, *Dokazivanje I dokazna sredstva u parničnom I upravnom postupku,* Zbornik radova pravnog fakulteta Univerziteta Vitez, broj 4, Vitez 2013, str. 21.
[22] Ibid, str. 22.

An inspection is required only upon a suggestion of a party, when a fact or a circumstance which is cleared, needs a direct review by the court.[23] Inspection is such a type of evidence which serves the court to, among other evidence, finds out facts, claims and attitudes that are very important for solving the dispute. It means the sensory perception of the judges, respectively of the court assembly with facts related to solving a certain dispute. Since the judge directly and personally acknowledges facts, and then brings a conclusion on the hearing, it is not allowed to reveal evidence which would contest the results of the inspection itself. Since evidence represent a way of affirmation of disputable facts in the litigation process, and the inspection is a part of the proofing procedure, it is clear that it is undertaken when it is needed to acknowledge whether there is a disputable fact or not. Also, in regards of clarifying circumstances which would be impossible to clarify if we didn't go on-site. That is how it can be cleared whether the sight is visible from a certain position, can something which is relevant for the decision be heard, determine what cadastral land is given to someone and was not mentioned in the agreement, cadastral marks that mark and identify a certain land etc.[24]

In litigation procedures, the inspection does not differ from a criminal inspection in the context of the method, but in the subject of the inspection itself. Therefore, the inspection in the criminal procedure is also carried out during the investigation, whereas in the litigation procedure it appears during the main discussion because of non-existence of investigative principles (only if they are exceptional) in the litigation procedure itself. It can be marked as evidence upon suggestion of the parties, or upon official duty. The decision is brought by the chairman of the Court assembly in the phase of preparation of the main discussion, or the Investigation assembly – during the main discussion about when the chairman of the Court assembly can't be authorized for realization of the inspection supervision.[25] Inspection can also be carried out along cooperation of an expert, provided by the party that suggested the inspection.[26] Without the presence of an expert, an inspection can't be carried out. Sometimes, there is confusion in the practice whether it is provision of evidence through inspection or an expertise. If the expert examines facts on his own and provides findings and opinions, it is realization of an inspection, but if an expert provides the court only with expertise, it is realization of evidence through inspection, which is a very rare practice.

The inspection of evidence in the litigation procedure is considered as one of the most simple and most authentic manners of acknowledgement, because there is no intermediary between the judge and the observer, however his application is limited, as it only proves facts that are existent at the present individuals, which are rarely disputed among the litigation procedures. It provides the court with the opportunity to solve all obscurities in regards of certain circumstances, to check the authenticity of allegations and create a clear image of what actually happened and surely approve facts upon which the decision is relying on.[27]

According to litigation procedure of RNM, inspection can also be carried out in cooperation with experts proposed by the party suggesting them[28]. The Assembly would authorize the chairman to inspect, if the case under investigation can't be brought to court or its' adoption would carry significant expenses, and the assembly considers that it is not needed to inform all

[23] Član 212 Zakona za Parnični Postupak RSM-a
[24] Чавдар, Кирил,,Коментар на законот за парнична постапка (коментар, судска практика, обрасци за практична примена и предмет), Агенција Академик, Скопје, 2006, str.460.
[25] Član 213 Zakona za Parnični Postupak RSM-a
[26] Član 212 Zakona za Parnični Postupak RSM
[27] About evidence in litigation process in RNM, for more, see:: Ангеловска, Марина, *Доказни средства во парнична постапка во имотни односи,* Правни факултет, Универзитет у Штипу, (мастер рад), Shtip 2014, 16-22.
[28] The law of litigation procedure, article 212, paragraph 2.

the members of the assembly immediately.[29] Regarding authorization of the court in direction of the inspection, there are three known situations: a) the subject of the inspection is an object that is located at one of the parties. This situation implies that forced means can't be applied in regards of reviewing objects that are located at one of the parties, b) the object that needs to be reviewed is located at someone else, when it is possible to obtain the object from the other person, which has the object, c) the object that needs to be reviewed is located at the authorities or a legal person who is trusted with application of public authorizations. Namely, in those cases, there is a responsibility upon these bodies, respectively individuals, to present the appropriate evidence (documents, objects etc.) to the court and the body that is leading the procedure.[30]

II. 1.b) Documents

Documents are used as evidence, not only in litigation procedures, but in all other procedures (administrative, criminal etc.). Having that natural persons like public notaries, authorized architects, auditors etc., can issue public documents, the legal definition should be changed in the manner that instead of regarding only the legal person, all other persons natural or legal, should be regarded in a general manner, as bearers of public authorizations. All documents are divided into public and private (non-public). According to all laws of litigation procedures of RNM, public documents are those documents which are issued in a formal manner within their competency, or documents that are issued in the same form by legal persons during implementation of public authorizations assigned by the law or a regulation based on the law. Public documents are those documents issued by authorities within their competency, respectively companies, institutions or organizations, based on public authorizations.[31]
Documents in litigation processes of property relations are all objects on which a written statement, an opinion or similar information is imported. Usually, it is a document written on a paper, however it can be written on skin, wood, rock or other objects that will keep the text written. The type of letters neither the language in which the text is written isn't important. If the text is in a foreign language, the court will request a translation of the document.[32] Public documents issued by foreign authorities are equal to domestic public documents, under the condition of reciprocity. Documents issued by foreign authorities are legally regulated through international agreements.

In the Law of litigation procedure of the Republic of North Macedonia, documents as evidence are included in articles 215 to 219[33]. During disputes about the rights of ownership, parties can submit a public or a private document. Here is an example: a case with number P-1 22/2014 the Basic Court– Berovo, subject of the dispute is the ownership right with the value of 40 000,00 denars. For this subject, parties have attached the following public and private documents:

- Purchase-sale contract with number …year 1996, 05.02.1996.
- Cadastral plot nr. 4053 Cadastral district Berovo,
- Decision nr…/12-Udr nr.../12 of 08.08.2012.
- Agreement for gift of land of 13.03.2012.

One of the ways of gaining ownership rights is the purchase-sale contract and additionally, it can be the gift contract. The subject of these agreements in this case is real estate. When real estate is the subject of gift agreement, the agreement must be verified publically, or any

[29] Ibid, article 213.
[30] Ibid, articles 214,217, 218,219.
[31] Ibid, article 214.
[32] Ангеловска, Марина, *Доказни средства во парнична постапка во имотни односи,* Правни факултет, Универзитет у Штипу, (мастер рад), Shtip 2014, p. 36.
[33] Articles 215,216,217,218, 219 Law of Litigation Procedure, Official Newspaper of RM, nr. 7 of 20.01.2011.

agreement that has a price for the purchased real estate, whereas the gift agreement if for free. An audit of the real estate must be provided to prove that a party is the owner of a certain real estate, because it is a public document which proves the ownership right, or the real right.[34] In order to serve as evidence, the document has to be neat, undamaged, especially in the part where the text is written; nothing should be erased, modified or added to it; it shouldn't have any other incompletions or signs that indicate forging of the document.[35]

The principle of discussion is dominant in the litigation process, whereas the investigation principle is dominant in the administrative procedure. Therefore, laws of litigation procedures are foreseeing that the court can ask the opposite party to bring a document, whereas in the administrative procedure, this authorization is awarded to the administration body in an obligatory form. Furthermore, considering that parties are presenting evidence in the litigation procedure, that is why it is provided that evidence can be brought, but in the administrative procedure that authorization is awarded to the administration body as an imperative. According to rules of bringing other evidence, in the light of principles that are dominating with the litigation and administrative procedures, the issue of bringing evidence is applied in various legal manners in these two procedures even when the documents are located at other individuals.[36]

It is also important to mention that the court should examine the formal side of the document:
1. Whether the one who issued the document is an authorized person to issue public documents and whether they issued the document at all or they didn't (it's authenticity);
2. If the document is issued within the limits of the authorization of the publisher; whether the document is formulated in the proper form and if it has a signature and a stamp of the publisher.[37]

II. 1.c) Witness

A witness is an individual who gives a statement about his observations of facts in the past, which could be significant to determine the truthfulness of the given statements. A witness, as opposed to an expert, conveys to the court only his sensory observations, without declaring his own opinion or conclusion. The role of a witness, in both procedures, has the individual who has expertise knowledge needed for understanding sensory observations, so-called expert witness.[38]

In the civil procedural law, there is a general duty of witnessing – anyone called as a witness is obliged to respond to the call and witness in a truthful manner. The duty of witnessing is a public legal duty which the witness is obliged to fulfil through his participation in the court procedure based on a court order. Individuals who enjoy immunity in accordance with rules of interior law based on their certain functions (president of the Republic, representatives of the Assembly, members of the Parliament, judges of the Constitutional Court and state courts) are also potential witnesses, if there is no special regulation which would free them from the duty of witnessing. Individuals who are able to present certain facts related to proofing of a certain

[34] Ангеловска, Марина, *Доказни средства во парнична постапка во имотни односи,* Правни факултет, Универзитет у Штипу, (мастер рад), Shtip 2014, p. 37.
[35] Ibid, p. 36.
[36] Puriševič, Fuad, *Dokazivanje I dokazna sredstva u parničnom I upravnom postupku,* Zbornik radova pravnog fakulteta Univerziteta Vitez, broj 4, Vitez 2013, p. 20.
[37] Radovanov, Ibid, p. 155-157.
[38] Poznić, Borivoje, *Građansko procesno pravo*, Beograd, 1989., p. 266.

subject can also be called as witnesses.[39] Witnesses are important evidence. They are usually the only and most authentic source of information about important facts. They provide the court to directly communicate with them, by asking questions, confronting, interrogation, so it can obtain an image of what they have observed and obtain a straight insight of what is happening in their behaviour, looks, moods, emotions, statements etc.[40]

However, presentation of those personal evidence and acquired statements should be taken with special care, having that identification of facts by witnesses can be weighted by various objective and subjective shortcomings and mistakes which can seriously damage the quality of the obtained information. Only individuals able to provide the court about proofing facts can be called as witnesses. However, underage children, as well as children with disabilities can be heard, with the condition that they are able to communicate. Foreign citizens can also witness, except ones that enjoy the status of diplomatic immunity.

Witnesses are heard individually and without the presence of witnesses who will be heard at a later stage. Witnesses remain in the courtroom if the certain court or sitting judge, after the parties declared, didn't fully free them or determined them to leave the courtroom temporarily. Holding witnesses that are heard in the court should prevent them to talk to witnesses outside the court about what they were asked, what questions they were given and what answers they provided. Before the hearing starts, the court first should warn the witness that he is obliged to say the truth and he can't remain silent about anything, which means that he is obliged to provide a full and true statement. At the same time, it should be highlighted that the statement must be full in order to be true. A true presentation of some elements about the topic of witnessing or an intentional silence of others can provide false statements. After they are warned about the obligation of providing true and full statements, the witness should also be warned about consequences of providing false statements. Witnesses in the role of evidence in the Law of litigation procedures are regulated in articles 220 to 234.

In article 220, paragraph 2, it is stated that witnesses can be heard exclusively by individuals that are not able to witness about facts determined in the litigation procedure. Whereas, article 221 says that one can't be called as a witness if he broke his duty of confidentiality or a military secret.

The witness has the right not to answer certain questions if there are important reasons for them, especially if his answer to those questions is exposing him to a great embarrassment, a significant material damage or prosecuting himself or some of his very close family member up to a third degree, his spouse or a relative of a second degree, and when the marriage is over, the spouse and his carer (article 223).

When the court calls the witness, it states their name and surname, name of one of the parents of the witness, time and date of the hearing, the legal issue about which they will be heard, specify that they are called as witnesses, consequences of their absence and the right of compensation of their expenses (article 227).

II. 1.d) Expert

An expertise as an evidence can be determined as a suggestion by the court, or the body that leads the procedure, when an expert knowledge is necessary, because they don't possess that

[39] Dika, Mihajlo, „Dokazivanje saslusanjem stranaka u parnicnom postupku", Zbornik pravnog fakulteta u Zagrebu, 2005, p. 508.
[40] Dika, *Ibid*, p.510.

type of knowledge themselves. In other words, it will be estimated whether to allow expertise in a situation when some of the parties suggest it. Also, a new regulation which determined what is all the elements which the proposal for expertise should contain, as well as the rights of declaring of the opposite side. However, if the parties don't comply with it, the decision of the litigation procedure will be brought by the court.

The court will require expertise what it comes to identification or explanation of any facts needed for expert knowledge that the court doesn't possess. The expertise is done by experts named by the civil court, but before they decide what individual will be taken as an expert, the court will hear the parties except in emergency cases when the court can appoint an expert, although it previously didn't hear the parties) and instead of a specified expert, the court could appoint another expert.

An expert is a third party, not related to the court or the parties, which is called by the court based on their expertise, gained skill or personal experience for verification of certain facts, circumstances or happenings that are relevant to the trial. An expert is the individual who possess those skills, knowledge and experiences in specific areas of operation, which the court through their legal education and general knowledge don't and can't possess. Only a natural person can be a court expert.[41] In the litigation procedure, more complex expertise is, by rule, appointed to professional institutions as priorities. Namely, it's about more rational and more economic procedure during presentation of evidence through expertise in the proofing procedure and reduction of the institution of so-called expert analysis.[42]

During the litigation procedure, expertise is applied as evidence if the party that has an objection or a reply to an objection carries an expertise and an expert opinion.[43] However, if the party suggests expertise as evidence, and there are facts and circumstances in which an expertise or an opinion can't be obtained, the court will determine the expertise in a written form. In the warrant, the court will name the facts or circumstances on which the expertise is being done, and upon request of a party, it is determined to whom it has been entrusted.[44] As mentioned in article 235, the expert must provide the Court with their expert finding and opinion in a written form within a deadline determined by the court, which can't be less than 45 days or more than 60 days, for more complex subjects. The expert always must explain the expert finding and opinion. At latest of 8 days prior to the trial, the court will provide the parties with the expertise and the expert opinion.[45]

The expertise is run by the authorities that ordered it. Before the expertise commits, the expert will be invited to study the subject of expertise carefully, to truthfully specify everything he observes and acknowledges and to present his opinion unbiased and in accordance with the rules of the science and the skill. They will be specially warned that false expertise is a criminal offense. An expert could testify only about facts that outcome from his direct findings, except if during the preparation of his finding and opinion they didn't use information on which other experts from the same field would reasonably use.[46]

[41] Triva. S, ,,Gradjansko parnicno procesno pravo (peto izmenjeno I dopunjeno izdanje) ", Narodne Novine – Zagreb, 1983, p. 123.
[42] Puriševič, Fuad, *Dokazivanje I dokazna sredstva u parničnom I upravnom postupku,* Zbornik radova pravnog fakulteta Univerziteta Vitez, broj 4, Vitez 2013, p. 29.
[43] Article 235 paragraph 1, Law of litigation procedure of RNM.
[44] Article 235, paragraph 2, Law of litigation procedure of RNM.
[45] Article 245, paragraph 1,2,3,4 Law of litigation procedure of RNM.
[46] Čalija Branko, Omanović Sanjin, *Građansko procesno pravo*, Sarajevo, Pravni fakultet, 2000., p 227.

In the litigation procedure, the party that suggests expertise is obliged to assign the subject and volume of the expertise through a proposal, and suggest a person that will apply the expertise. The opposite party will declare about the suggested expert, as well as the subject and volume of the expertise. If the parties don't agree about the person that has to be assigned as an expert and the subject and volume of the expertise, that decision will be brought by the court.[47]

II 1.e) Hearing of parties

The Law of litigation procedures of RNM, in article 249 provided that on a suggestion of a part, the court will determine presentation of evidence through hearing of parties. The court will decide to hear only one party if the other party doesn't provide a statement or if it doesn't reply to the call of the court. For a party that doesn't have a litigation capacity, their legal representative will be heard. For a legal person, a person assigned to represent them by the law or a statute or rules will be heard (article 250, 251).

Hearing is considered as very important evidence that is used in litigation procedures of property relations[48]. The parties are separately invited for hearing, and the invitation is handed over directly to the party or the person that will be heard. In the invitation, it is needed to mention that the party is invited for a hearing and to warn them that in their absence, evidence will be heard only from the party that is present. When it comes to natural persons, they have to have a litigation capacity in order to be heard.

The provision of law is foreseeing that an individual has to have the capacity for a litigation procedure, respectively they have to take their own obligations personally.[49] If the party is not capable for litigation procedure, in that case their legal representative is being heard, assigned by the authorized official body.[50] In the law of litigation procedures, forcible measures towards parties in the proofing procedure are excluded. Regulations about presenting evidence through hearing of witnesses will be also applied during presentation of evidence through hearing of parties, if there are no other provisions provided for hearing of the parties. This regulation, first of all means that only a party that is capable to provide the court with a notice about the facts that are being proven can be heard (article 254). Evidence through hearing of parties is presented without taking an oath (article 256). Regulations for presentation of evidence with witnesses will also be applied during presentation of evidence through hearing of parties, except if instead of hearing of parties something else is not being provided (article 257).

III. CONCLUSION

This scientific work theoretically collaborates proofing and evidence in the litigation procedure in the legal regulations of the Republic of North Macedonia, with special review on the property-legal relations. The main aim of every country is the establishment of a legal order that will contribute towards realization and protection of the citizen's rights, respectively realization of justice in every specific case. Exactly the right of initiation of procedure in front of court which citizens enjoy is one of the basic and crucial rights related to natural rights and freedoms and their legal protection. Initiating a procedure in front of court by citizens and legal persons is crucial for establishment of individual freedoms and rights, as well as property and other interests of entities themselves. One of the ways to achieve that aim is the litigation

[47] Article 244, paragraph, 1,2,3, Law of litigation procedure of RNM.
[48] For more, see, Ангеловска, Марина, *Доказни средства во парнична постапка во имотни односи,* Правни факултет, Универзитет у Штипу, (мастер рад), Shtip 2014, p. 68.
[49] Article 71 Law of litigation procedure of RNM.
[50] Article 252, paragraph 1, Law of litigation procedure of RNM.

procedure, which is a mean through which parties in the role of a prosecutor and sued are requesting legal protection for their endangered and violated subjective civil rights. The litigation procedure is regulated by the law of litigation procedure, that is adopted in year 2005 and there are few amendments, the most significant changes and complements are from years 2010 and 2015. All previous reforms, i.e. changes and complements of the Law of litigation procedure were directed towards upgrade of mechanisms that will enable to overcome and lower certain weaknesses that the litigation procedure has and thereby increase efficiency of the litigation procedure, which will increase the quality of protection of citizens and other legal subjects in front of court.

Evidence in property-legal relations is sublimated in the Law of litigation procedures of RNM which, as previously mentioned, suffered several changes in the context of proofing and evidence. As a rule, in the litigation process, all evidence and their presentations are suggested by the parties. The court determines presentation of only that evidence in cases when it is about disallowed disposition of the parties. Proofing in the litigation procedure is carried out with those evidence that are adequate for determination of the condition of matters by their form and content, which is determined in every particular case. None of the concerned procedures isn't levelling evidence, but proofing strength is determined based on free belief, which is based on conscious and careful estimation of every evidence separately and all evidence together. As a rule, evidence foreseen by the Law of litigation procedures of RNM that are most commonly used in court trials regarding property-legal relations in the RNM are: inspection, witnesses, documents, experts and hearings.

The tendency of the Law in litigation procedures for acceleration and concentration of the litigation procedure has sharpened the regime of presentation of evidence in property-legal disputes. Certain news in the litigation procedure can be sublimed in the relation of presentation of new facts and evidence, the issues of preliminary statements, without doubt lead towards acceleration and concentration of the procedure. In a situation when the procedural principles are in mutual contradiction, it is weighed towards reaching a certain balance, whereas expedience determines which principle will overbalance.

In the procedural sense, creating of conditions for direct evaluation of evidence is needed, along with strengthening elements of contradiction during the examination of a proofing conducted, parallel with clearly defined (and respected) rights, obligations and deadlines, provide optimal conditions for a reliable estimation and proofing valuation of the conclusion for an efficient procedure within a reasonable and acceptable timeline. In many cases, there is a combined application of presented evidence, i.e. only inquiries are not used as evidence, but more evidence is usually used to confirm facts in an easier manner.

As a rule, the court decides about procedural issues when it leads the trial through a decision in the form of decision, and meritoriously about claims in the procedure for obstruction of possession. Procedural decisions are brought during the trial by the sitting judge and they are applicable towards parties as soon as they are published. Usually, the court is not tied for those decisions, i.e. it can amend them. If a special appeal can be directed against the decision, it is delivered to the parties in written form, and the same applies for the case when based on that decision, an implementation or litigation can be requested. The court is tied for its' own decisions from the day of their publishing on the trial, respectively from the day it delivers them to the parties, except in the case when the decision is related to the trial running. Law regulations related to the verdict, should also be applied to decision in an appropriate manner. If a decision is brought about imposition of a material fine to the participants in the procedure,

it should be explained, because based on the explanation content it can be evaluated whether the imposed fine is right. A special appeal against this decision is allowed, and it has to be submitted to the disputed parties.

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