

Conclusions of the summary report on the courts' jurisprudence
related to the practical and theoretical questions of
the extent of proof (quantum of evidence) required for determining a case

The specific feature of the topic examined by the jurisprudence-analysing working group is that the practical and theoretical questions of the extent of proof (quantum of evidence) required for determining a case do not appear in the courts' jurisdiction as clearly defined statutory rules and/or jurisprudence developed around those rules. Extent of proof (quantum of evidence) can only be grasped at a higher and more abstract level of generalisation, as an abstract concept. This concept has emerged as a result of the joint enforcement of various procedural rules, among which the rules governing evidence-taking and the related fundamental provisions have special importance. Because of the complexity and indirectness of the issues under examination, the jurisprudence-analysing working group decided to approach and present them from a theoretical point of view, primarily from the aspects of epistemology and legal theory.

As a first step, the jurisprudence-analysing working group mapped, collected and critically analysed the relevant literature. On the basis of the available material it could be established that the appropriate extent of proof was discussed in a great number of works in various legal and non-legal journals, but the majority of those works addressed only criminal law aspects. It could also be established that the bulk of the available literature dealt with and elaborated various aspects of the arising issues, but hardly any comprehensive and in-depth analysis was available. The jurisprudence-analysing working group, however, wished to present and analyse the key factors and factors of the appropriate extents of proof (quantum of evidence) in a comprehensive manner. In carrying out this task, the working group relied on reports drafted by its members on the relevant sub-areas, and summarised the main findings of those reports according to a uniform logic. In drafting the summary report, the working group focused on the examination of the effect of the various factors and on the manner and way in which those factors exerted an effect on the shaping of the extent of proof deemed to be necessary by a court to pass a judgment.

The jurisprudence-analysing working group agreed on that the topic under examination could not be examined in forms and ways that were usually applied by jurisprudence-analysing working groups. Since the extent of proof is an abstract concept which is not only complex but also multidisciplinary in its nature, and since it is studied and described by several and various disciplines, it was agreed that due to the legal and non-legal characteristics of this topic answers must be looked for not at the level of statutory rules but at a higher level of generality. Therefore, the outcome of the analysis could not appear in normative form, because the aim was not to prepare a draft Department Opinion or a guidance but to present and critically analyse the various aspects and areas of the problem.

However, the jurisprudence-analysing working group did not intend to fully distancing itself from jurisprudence and to fully give up the examination of aspects that are relevant for the courts. Therefore, the working group compiled a questionnaire inquiring about the aspects found by the judges relevant in their adjudicative work. The questionnaire was sent to all the judges of the country. The summary report contains the questionnaire replies analysed by

sociological and statistical methods, which are not too well-known and fairly rarely used in legal disciplines.

In the summary report the jurisprudence-working group wished to present the problematics of extent of proof as it emerged and developed in the various disciplines. This approach is reflected in the chapters which deal with the issue in the context of philosophy-epistemology, logics and psychology. These disciplines are in close and adequate relationship with the problematics of the required extent of proof, therefore the chapters presenting these disciplines could be easily and naturally included in the summary report. The working group, however, also found it necessary to extend the scope of its examination to the epistemological methods of such other disciplines which are not closely related to the problematics of judicial certainty and from which no transition to the problematics of judicial certainty is possible, yet the lessons that can be drawn from their comparative analysis may be useful and instructive in the field of judicial adjudication, too.

As to the extent of proof required for the passing of a court decision, upon the findings of the summary report it can be established that the required extent varies according to the number and intensity of the determining factors of the particular cases. Therefore, it needs to be emphasized that, despite common features, the requisite extent of proof varies from case to case and depends on the particular determining factors of the individual cases. The most important such factors are collected and analysed in the summary report. Since the extent of proof must always be examined in a given concrete context, its removal from that context or the treating of a factor as absolute would lead to erroneous conclusions and would distort the results. Therefore, from the findings of the summary report no conclusions relating to individual cases may be drawn.