ABSTRACT

EPISTEMOLOGY OF JUDICIAL EVIDENCE

This thesis focuses on two main problems. The first is a comparison of the most influential recent paradigms of evidence law: the rationalist tradition of evidence law and the so-called new evidence scholarship. The second is searching for the criterion of answering the question of fact in the judicial application of law in the triangle of truth — probability — correctness (in the narrow sense of the word). The aim is to determine the current leading intellectual foundation of evidence law, and which standard should be applied to establish the correctness of the fact-finding (here I mean correctness in the broad sense).

The study is built on the developed common law theories of evidence that clarify the concept of evidence law from a broader legally philosophical perspective. To fill the theme into the Czech legal theory and the theory of procedural law is not missing. This work is not largely focused on the process of proof but more on the key categories, criteria, and thought systems that surround the evaluation of evidence. Hence, the text includes the fundamentals of the judicial approach to acquiring knowledge — the formation of the judge's belief, the realistic scheme of the application of the law, and the theories of truth and probability. What is more, the standard of proof is not left behind and its traditional general rule, described in the civil law countries, is slightly revised from a more general perspective.

After the analysis of the ground stones of evidence law theory, it is shown that the dominant criterion for the question of fact should be correctness in the narrow sense. That correctness has an epistemic, legal, and common levels, so it is cleansed from non-epistemic aspects in the 5th and 6th chapters. After doing so, the narrow concept of correctness is related to the most relevant projects of probability by philosophers, logicians, and legal theorists.

The developed theory of correctness is epistemologically fulfilled especially by a strong type of rationalist theory of probability. That is why the last chapter examines the possible links of the theories of probability to the above-mentioned two great paradigms of evidence law theory.

Key words: Evidence, Courts, Probability