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# THE STANDARD OF PROOF IN THE COURT PROCEDURES AND IN THE INTERNATIONAL ARBITRATION PROCEDURE

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**Abstract**

Due to the different topics and rules, there are many similarities and many differences in the procedures in front of the courts and in front of the international arbitration tribunal.
In both of them, there is always a dispute that must be solved. In national courts, the procedure is regulated by national laws and in arbitration tribunal, it is regulated by specific rules (national and international). At the end, it is relevant for both of them, that the court or/ the arbitration tribunal brings a right and fair decision. For realizing their interests and justifying their claims, the parties must bring evidences and prove in front of the court/ the tribunal. Beside that, they are also obliged to convince the court/ the tribunal that their evidences are based and that it must bring a decision in his/her favor. If the party fails to convince the court/ the tribunal, he/she can lose the case.
In court procedures, the level of convincement of the judge is called the standard of proof. While there are three main standards in court procedures (the standard of proof in the balance of probabilities and the standard of clear and convincing evidences for civil cases and the standard of proof beyond a reasonable doubt in criminal cases), the theory does not operate with none of them in the arbitration procedure. But, nevertheless, there is also a procedure that takes place and there is a duty in convincing the tribunal in an arbitration procedure. Presenting how are those standards defined and how do they work throughout the procedures is the main objective of this paper.

*Keywords:* evidences, standard of proof, balance of probabilities, clear and convincing evidences, proof beyond a reasonable doubt.

## 1. Introduction

The "burden of proof" is the obligation which rests on a party concerning a particular issue of fact in a civil or criminal case, and which must be discharged or satisfied, if that party is to win on the issue in question. This burden is often referred to as "the legal burden". It is to be distinguished from what is called "the evidential burden", which, is something completely different (Allen, 2008, pp. 150). It is very important to remember that, in relation to any particular issue, the burden of proof can rest on only one party. Thus, in relation to a single issue, you cannot have a burden on one party to prove the existence of a state of affairs and a burden on the other party to prove its non-existence (Allen, 2008, pp.151)

The burden of proof is tightly connected with the Latin maxim “simper necessitas probandi incumbit ei qui agit”, that means: “The one who claims, must prove, anytime”. Due to that, the accusations in the criminal procedure must be based in particular evidences and the one who claims must convince the judge that the claims are true.

Once the parties propose and present their evidences, the court decides if the party has discharged the burden of proof. The necessary standard of proof depends if it is a civil case or a criminal case. In criminal cases, the necessary standard of proof that must be achieved is known as prove beyond a reasonable doubt and in civil cases, there are two standards: I. proving on the

balance of probabilities and II. The standard of clear and convincing evidences.

## 2. Burden of proof in criminal cases

It is well accepted that in criminal cases, the burden of proof, lies on to the accuser and the accuser must prove the guiltiness of the defendant, as well as the defendant, must not prove his/her innocence. The case Woolmington v DPP (Woolmington v DPP, United Kingdom House of Lords Decisions, 1935, https://www.bailii.org/uk/cases/UKHL/1935/1.html [last seen on: 11.08.2023]) is of high importance in understanding the burden of proof. In this case, Reginald Woolmington, a 21-year man, killed his 17-years old wife Violet Kethleen Woolmington, who had left him. Woolmington`s defence was that he did not intend to kill Violet. Specifically, he claimed that he had wanted to win her back and planned to scare her by threatening to kill himself if she refused. He had attempted to show her the gun which discharged accidentally, killing her instantly. The case was so strong against Woolmington that the burden of proof was on him to show that the shooting was accidental. At trial, the jury deliberated for 69 minutes and Woolmington was convicted and sentenced to death. On Appeal to the Court of Criminal Appeal, Woolmington argued that the trial judge misdirected the jury. Lord Justice Avory refused leave to appeal, relying on a passage of Foster`s Crown law (1762): "In every charge of murder, the fact of killing being first proved, all circumstances of accident necessity, or infirmity are to be satisfactorily proved by the prisoner, unless they arise out of the evidence produced against him". The Attorney General then allowed the case to be appealed to the House of Lords. The issue brought to the House of Lords was whether the statement of law in Foster`s Crown Law was correct when it said that if a death occurred, it is presumed to be murder unless proven otherwise. Delivering the judgement for a unanimous Court, Viscount Sankey, made his famous "Golden thread" speech: "Throughout the web of the English Criminal Law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner`s guilt subject to…the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner…the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained". The conviction was quashed and Woolmington was acquitted. It was this decision in 1935 which first clearly established the so-called "Golden thread" of English criminal law: the principle that it is for the prosecution to prove the defendant`s guilt. As the House of Lords proceeded to state, this rule was subject only to the common law exception of insanity and any statutory exception created by Parliament (Doak and McGourlay, 2009, pp.55) . It would be possible to justify the rule as part of a policy to avoid embarrassing criticism of the administration of justice by minimizing wrongful convictions. These are more likely to be avoided if the burden is fixed in this way then if an accused person has to prove his innocence (Allen, 2008, pp.159). Knowing that you are innocent does not mean that you will be always able to prove it in front of the court! But, where a burden of proof rests on the defendant, in relation to any issue, he must be convicted even though the magistrates and jury are left undecided about facts that are relevant to that issue. The Criminal Law Revision Committee, in their 11th Report, were strong of the opinion that burdens of the defence should be evidential only. They pointed out that in the typical case under the existing law, where the essence of the offence is that the offender has acted with blameworthy intent and the defence that the defendant must prove is that

he acted innocently, it was "repugnant to principle" that a court, left in doubt as to the defendant`s intent, should be bound to convict (Allen, 2008, pp.159). And contrary: if the state as an opposite party of the defendant would be exempted from the duty to propose and to prove the facts against the defendant, the elements of "fair trial" would be excluded from the criminal procedure. The defendant would never be sure that he will be convicted only if there are no doubts on his guiltiness and that the procedure will be based only by law (Uzelac, 1997, II, pp.391) . In criminal cases, sometimes, happens the shifting of burden of proof toward the defendant, which means the duty of the defendant to prove certain circumstances.

*2.1. Standard of proof in criminal cases:* One of the main characteristics that differentiate the burden of proof vs. the evidential burden, is the fact that for discharging the burden of proof, the prosecutor must convince the judge that the defendant is guilty and that convincement must be of a high level of probability, which in literature is known as proof beyond a reasonable doubt. At the other hand, discharging the evidential burden means the obligation of parties to propose and produce sufficient evidence to convince the judge that the fact is true. A question that comes very often is: "Which quantity must have the convincement of the judge?". This question is answered by the term the standard of proof. The standard of proof means the quantity or the level of proving that must be achieved (Doak and McGourlay, pp.57). That standard means the level of proof demanded or required on a specific case, established by assessing the evidences. The standard of proof indicates the volume, the quantum of the evidences required to achieve a certain persuasion in judicial proceedings (Bilalli, 2011, pp.51). In the USA, which doctrine is most concerned with the standard of proof, are mentioned three standards of proof: the general standard (the lowest) known as preponderance of evidence, the general standard that is necessary in criminal cases, which is known as proof beyond a reasonable doubt and the last one which is applied in certain civil cases where is decided for special relevant facts and it is known as clear and convincing evidences. The practice and literature of UK, often recognize only two standards, respectively the civil standard that is known as the standard on the balance of probabilities and the criminal standard, that is known as proof beyond a reasonable doubt (Uzelac, 2003, I, pp.301; see also Doak and McGoarlay, pp.57) . Why should there be two different standards of proof? Having two standards reflects a fundamental assumption that our society makes about the comparative costs of erroneous factual decisions. In any judicial proceedings in which there is a dispute about the facts of some earlier event, the fact-finder can never acquire unassailably accurate knowledge of what happened. All he can acquire is a belief about what probably happened. The strength of this belief can vary. A standard of proof represents an attempt to instruct the fact-finder about the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication. The expressions "proof on the balance of probabilities" and "proof beyond a reasonable doubt" are quantitatively imprecise. Nevertheless, they do communicate to the fact-finder different ideas concerning the degree of confidence he is expected to have in the correctness of his conclusions. Any trier of fact will sometimes, despite his best efforts, produce a decision about facts that is wrong. In a lawsuit between two parties, a factual error can make a difference in one of two ways. First, it can result in a judgement in favor of the claimant when the true facts warrant a judgement for the defendant. The corresponding result in a criminal case would be the conviction of an innocent man. On the other hand, a factual determination that is wrong can result in a judgement for the defendant when the true facts justify a judgement in claimant`s favor. The result corresponding to this in a criminal trial would be the acquittal of a guilty man (Allen, 2008, pp.175-176). The

standard of proof influences the relative frequency of these two types of erroneous outcomes. If the standard of proof in a criminal trial was proof on a balance of probabilities rather than proof beyond a reasonable doubt, there would be a smaller risk of factual errors resulting on the release of guilty persons, but greater risk of factual errors resulting in a conviction of the innocent. The standard of proof in a particular type of litigation, therefore, reflects society`s assessment of the harm attaching to each kind of error. It is this that explains the difference between criminal and civil standards of proof. In a civil suit, we generally regard it as no more serious for there to be an erroneous verdict in the defendant`s favor than for there to be such a verdict in the claimant`s favor. Proof on the balance of probabilities, therefore, seems the appropriate standard, but in a criminal case, we do not view the harm that results from the conviction of an innocent man as equivalent to the harm that results from acquitting someone guilty. The defendant in a criminal trial has generally more at stake than a defendant in a civil trial, and so the margin of errors must be reduced in his favor by placing on the prosecution the burden of proving guilt beyond reasonable doubt (Allen, 2008, pp.176). As Lord Woolf CJ has stated: "At the heart of our criminal justice system is the principle that while it is important that justice is done to the prosecution and justice is done to the victim, in the final analysis, the fact remains that it is even more important that an injustice is not done to a defendant. It is central to the way we administer justice in this country that although it may mean that some guilty people go unpunished, it is more important that the innocent are not wrongly convicted" (In Re Winship, Washington D.C.,31.III.1970,http://law.jrank.org.pages/12939/In-re-Winship.httml). The level of convenience is higher in criminal cases compared to civil cases. In the criminal cases, while bringing a decision, the judge must be convinced among 95-99% and in civil cases that convincement is above 50%.

*2.1.1 Standard of proof in criminal cases- Proof beyond a reasonable doubt:* Defining the term "proof beyond a reasonable doubt" in the theory has been shown as a very difficult thing. Often, it means that the facts are proved to that level, that does not leave a "reasonable doubt" in the man`s rationale. It is possible to exist a doubt, but it is such a little one that does not allow another conclusion. The studies show that the proof beyond a reasonable doubt means convenience that is higher than 90%. The rule prescribing the standard of proof is a matter of law for the judge. Whether the evidence adduced meets the standard is a question for the jury as a tribunal of fact. In criminal trials, therefore, the judge must direct the jury on the standard of proof that the prosecution is required to meet33. In criminal cases, where freedom or life itself may hang in balance, the federal constitution of the USA has been interpreted to require the highest level of proof, known as "proof beyond a reasonable doubt". This demanding level of certainty requires that the prosecution proves that the accused is guilty by introducing strong and overwhelming evidence of guilt that meets the stated standard of proof beyond e reasonable doubt. The proof presented by the prosecution must have sufficient believability and substance to rebut the strong constitutional presumption of innocence that a defendant possesses throughout the trial. In legal theory, this means that every element of the offence charged in the indictment, as well as any aggravating circumstances that affect a sentence, must be proved beyond a reasonable doubt. Otherwise, the accused must be acquitted (Ingram, 2009). Sources from the common-law system define this standard as "golden thread" of criminal law that obliges the prosecution to prove the guilt of the defendant (Uzelac, I, 1997, pp.305).From many attempts for defining this standard, in American books is very often mentioned the Lord SHAW, that in the case Commonwealth v. Webster36 (COMMONWEALTH vs. JOHN W. WEBSTER 5 Cush.295,

59 Mass.295- March, 1850, http://masscases.cp,/cases/sjc/59/59mass295.html, pp.320), defines it like: "*It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. Al, the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary, the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgement, of those who are bound to act conscientiously upon it. This we take to be proof beyond a reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.*". Another interesting and important explanation of the term proof beyond a reasonable doubt is given in the case In re Winship (97 U.S. 358 (1970) IN RE WINSHIP No. 778, Supreme Court of United States, 1970), which states: "*The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, supra, at 453. As the dissenters in the New York Court of Appeals observed, and we agree, "a person accused of a crime . . . would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case." 24 N. Y. 2d, at 205, 247 N. E. 2d, at 259. The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society 364*364 that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in Speiser v. Randall, supra, at 525-526: "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of . . . persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt." To this end, the reasonable-doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue." Dorsen & Rezneck, In Re Gault and the Future of Juvenile Law, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967). Moreover, the use of the reasonable doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense*

*without convincing a proper factfinder of his guilt with utmost certainty. Lest there remain any doubt about the constitutional stature of the reasonable doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.*
In the literature from United Kingdom, most often is cited the speech of Lord Denning in the case Miller vs. Minister of Pensions (1947) (Lord Dening in MILLER v Ministers of Pensions, https://ulii.org>files>judgement>high-court>high-court-2010-I 78) , which is as follows: "*Proof beyond a reasonable doubt does not mean proof beyond shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice if the evidence is so strong against a man as to leave only a remote possibility in his favour..... the case is proved beyond reasonable doubt but nothing short of that will suffice."* Today, this standard of proof is widely spread on the Continent as well, in the so-called hybrid systems. As such, many criminal justice systems throughout Europe require from the prosecution to prove the guilt of the defendant beyond reasonable doubt or with high certainty, otherwise, the defendant shall be acquitted . For instance, in Germany, the judge`s conviction of the defendant`s guilt "must be subjective and must be based on persuasive factors, which leave no room for reasonable doubt" (Doubt in favor of the defendant, Guilty beyond reasonable doubt, Comparative Study, OSCE Mission to Skopje, Skopje, 2017, pp. 65). In the Law on criminal procedure of Italy (Art. 533(1)) is stated that: "The judge shall convict the defendant only if defendant is found guilty beyond reasonable doubt of the crime he is charged with. According to the article 403 (3) of the Law on Criminal Procedure of the Republic of North Macedonia, the court shall acquit whenever the prosecution fails to prove beyond a reasonable doubt that the defendant is guilty. The standard of proof beyond a reasonable doubt must be discharged by the prosecution. This standard applies on all criminal cases. It does not seem for proving beyond any shadow of doubt, but only convenience beyond a reasonable doubt, that means that a rational person will not have a reason to not trust to the party or will not have a reason for a clear doubt about it. For the first time it was used in XVIII century in common-law literature (Uzelac, 1997, pp. 306).

*2.2. Standard of proof in civil cases:* The contemporary literature in USA, in civil cases, operates with two standards: I. the standard of clear and convincing evidence and II. the standard of preponderance of evidences. In the UK literature, it is used only the second one (the standard of preponderance of evidences, the standard on the balance of probabilities).

*2.2.1. Preponderance of evidence :* The plaintiff in a civil case possesses the burden of proof, which requires that the truth of the plaintiff`s claim be established by a fair preponderance of the credible evidence when considered with the defendant`s evidence. The preponderance standard means by the greater weight of evidence and has been stated to be anything more than 50 per cent of the believable evidence, although a mathematical model often does not provide a precise analogy. The concept of the preponderance of the evidence does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase preponderance of the evidence refers to the quality of the evidence; that is its ability to convince and the weight and the effect it has on the juror`s mind. For the civil plaintiff to prevail, the evidence that supports the claim must appear to the jury at least slightly more believable than the evidence proposed by

the opposing party. If the evidence proposed by the plaintiff fails to be more believable than the defendant`s evidence or if the evidence of both sides weighs so evenly that the jurors are unable to say that there is a preponderance on the plaintiff`s side, then the jury must resolve the question in favor of the defendant (Ingram, 2009, pp. 47-48) . An attempt to define this standard is that of Denning J. in Miller v. Minister of Pensions. There he said that, in a civil case, the evidence "must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: "We think it more probable than not", the burden is discharged, but, if the probabilities are equal, it is not (Allen, 2008, pp.177). The preponderance of the evidence does not mean more evidences or more witnesses, but evidences that weigh more! It is lower than the standard of proof beyond a reasonable doubt.

*2.2.2 Clear and Convincing Evidence:* Intermediate standard of clear and convincing evidence is a specific standard for American theory; English theory denies it, although sometimes they use it (Uzelac, 1997, pp.304). It is also known as clear, convincing and satisfactory evidence; clear, cognizant and convincing evidence; clear, unequivocal, satisfactory and convincing evidence. This standard means that to prove a fact, a party must convince the judge or jury that it is highly more probable that the fact is true. This is a medium level of burden of proof which is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than proving evidence beyond a reasonable doubt. To meet the standard and prove something by clear and convincing evidence, the party alleging the contention must prove that the contention is substantially more likely than not that it is true ( Clear and Convincing Evidence, Legal Information Institute, Cornell Law School, Open Access to Law since 1992, https://www.law.cornell.edu/wex/clear_and_convincing_evidence, [last seen on: 01.08.2023]) . This standard appears because many civil cases look for a higher certainty. It is typical for cases of fraud, heritage, matrimonial issues, etc. It is higher than the standard of the preponderance of the evidence and lower than the standard of proof beyond a reasonable doubt and in percentage, it is higher than 70% certainty (Bilalli, 2011, pp.62).

*2.3 The proving procedure in international commercial arbitration procedure:* The process of proving is a joint activity of the tribunal and the parties that consists in the proposal, selection, gathering, examination and evaluation of the means of proof with the aim of proving the facts on which the claim or the answer to the claim are based. The arbitration tribunal conducts the proving procedure in order to verify the relevant facts on which the claims of the parties are set. There is no doubt that the proving process has a central and significant place in the procedure in front of international commercial arbitration, since the success or the failure of a party in the dispute depends from his success in proving of the facts on which he/she basis his/her claim. This shows that the process of proving is of a huge importance because any mistake or not proper activity can lead the process in an inappropriate direction usually resulting with bringing an un-fair or wrong decision (Ademi, 2013).

In the national legislations and in the regulations of the international commercial arbitration, there aren`t provisions that in a detailed way regulate the process of collecting and presenting of the evidences. However, this must be carried out in accordance with a certain procedure. That procedure, primarily depends on the will of the involved parties which means that in the international commercial arbitration procedure there is a flexibility in creating rules on evidence procedure. If the parties fail to find common solution on evidence procedure, the tribunal has the competence to define them! Indeed, arbitrators have wide competences in terms of rules on evidence procedure. Also, in many national legislations the right of arbitrators to decide on

admissibility, relevance, originality and the power of proposed evidence is emphasized in an explicit way (ML of UNCITRAL-it, art 19(2); LATNRM, art. 19 parag. 2; LA of Kosovo, art. 23.2; LA of Croatia, art. 18(2); LA of Serbia, art. 32 parag. 4; KPC of Germany, art. 1042(4); Court Code of Belgium, art. 1700(3); Arbitration Rules of UNCITRAL, art. 27(4).).

In practice, arbitrators refer to the IBA Rules on the Taking of Evidence in International Arbitration- IBA Rules. Those rules were adopted due to the existence of different rules on the evidence procedures in the *common law* and *continental system of law* and also, reflect the common accepted rules on evidence procedure in international arbitration. They are in force since 2010 and represent a revised version of the IBA Rules on the Taking of Evidence in International Commercial Arbitration that were approved in 1999. The parties and the arbitrator may adopt them as a whole or in certain parts and also may use them as a guide during the procedure. They can also adapt the IBA Rules provisions to the specifics of their case. Abovementioned IBA Rules are more detailed than the institutional arbitration regulations. Among other things, those contain provisions on documentary evidences, witnesses, experts, direct examination as well as the admissibility and evaluation of the evidences (Those IBA Rules are accessible on: <http://www.ibanet.org/Publications/publications_IBA_guides_and_free_ mat erials.aspx> (last seen on: 15.08.2023)).

For the purposes of this paper we will focus on the burden of proof and the standard of proof in arbitration procedure.

*2.3.1 The burden of proof in international commercial arbitration procedure:* As we mentioned above in this paper, the burden of proof belongs to the plaintiff.

In the international commercial arbitration procedure there is a principle that determines that the party has the burden to present evidences that they consider to be sufficient to prove their claims. The parties can present evidences that they consider as necessary ones to clarify their positions. Regardless of the specific position- the plaintiff or the defendant- the one who has made a claim has the burden of proving it (*onus probandi incumbat allegandi):* as it was stated by the former President of Iran- *U.S. Claims Tribunal: "the burden of proof is what you have to convince me."*(Selby, 1992, pp.135, 144) .

In other words, the concept of burden of proof determines who bears the risk of not proving a fact in the procedure in front of the international commercial arbitration. According to *probation incumbit actori*, each party must prove its claims. The essence of not proving the facts on which the parties` claims are based is summarized with the Latin maxim *idem est non aut non probari* which means that what is not proven, does not exist.

The duty of proving its facts by the party is defined in many Rules of procedure in front of international commercial arbitration, i.e. the Rules of UNCITRAL- art.27(1): "Each party shall have the burden of proving the facts relied on to support its claim or defense" (See also the Arbitration Rules in Kosovo 2011 (art.28.1); Swiss Arbitration Rules (art.24.1), etc.). Likewise in the procedure in front of national regular courts, in the procedure in front of the international commercial arbitration, there is no need to prove the well-known facts (notable fact- *notoria non eget probatione).* It should be noted that the national legislations as well as international arbitration conventions treat the burden of proof only in an indirect way[1].

[1] An exception is the Malta Arbitration Law of 1996, which in Article 35(1) expressly provides that each party has the burden of proving the facts on which its claim or defense is based ("Each party shall have the burden of proving facts relied on to support his claim or defense.")

As in the procedure before the state courts as well as in the procedure before the international commercial arbitration, there is no need to prove the universally known facts (notable facts). Also, it should be emphasized that national legislations and international arbitration conventions treat the burden of proof only indirectly.

*2.3.2 The standard of proof in international commercial arbitration procedure:* Unlike the burden of proof, there is no specific provision in international commercial arbitration law that defines the standard that must be achieved. Also, even in international commercial arbitration practice there is little guidance as to what standard of proof will actually apply (i.e. "balance of probabilities", "clear and convincing evidence" or even "beyond a reasonable doubt" ). Indeed, international arbitration conventions, national arbitration legislation, arbitration regulations and even the decisions of arbitral tribunals are almost uniformly silent on the subject of standard of proof (Pietrowski, 1996, pp. 379; see also Kazazi, 1996).
This fact is in part a reflection of the general rule that the tribunal has authority to determine the value of all evidence presented by the parties. So, it is a matter of a completely personal assessment of the evidence by the tribunal, in accordance with which the tribunal, based on the evidence presented by the parties, must decide whether the claim or the answer to the claim is meritorious. Which facts the arbitration tribunal will take as proven depends on the conviction of the tribunal itself (l'intime conviction du juge).(Lew, Mistelis and Kröll, 2003, pp. 561) But, at the other hand there are authors that consider that the standard of proof that must be reached in fornt of international arbitration tribunal is similar to the standard of the proof on the balance of probabilities ( Blackaby, Partasides, Redfern and Hunter., 2009, pp. 388)

## 3. Conclusions

The court procedure in front a national court and the arbitration procedure in front of an arbitrations tribunal takes places when there is a dispute to be solved. There are different rules in those procedures but there are also similarities. In both of them, the aim is to bring a final decision that will fulfill the interest of justice. The final decision and its effects are different in those procedures but in both of them, it comes only after a contradictory process have taken place. Parties in both procedures are interested for a decision in their favor, but the judge/arbiter is the subject that must decide in favor of one of them.
Convincing the court/ the tribunal occurs by presenting, bringing and explaining the evidences and their co-relations with the main topic of the case.
An old principle ei incumbit probation qui dicit non qui negat is still being used in both procedures. That means that the parties are obliged to proof their statements and bring evidences to support their claims.
The decision-making body, like there are the courts and the arbitration tribunal must be convinced by the parties.
In criminal procedure, the burden of proof is on the prosecutor and he must convince the court that the accused person is guilty. For fulfillment of the burden of proof in the criminal procedure it is necessary to get the standard of proof beyond a reasonable doubt. This is the highest standard to be achieved in a court procedure.
In civil cases, a common standard for euro-continental and common law system is the standard on the balance of probabilities or the preponderance of evidences. The civil procedure in the United States of America also operates with an other standard (for more complicated cases of civil matter) that is known as the clean and convincing evidences.

The theory of arbitration procedure did not develop enough this standard but there is a dominant view that the standard that must be achieved in the procedure in front of international commercial arbitration tribunal is the standard of proof on the balance of probabilities

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