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FEATURES OF EVALUATION OF EVIDENCE IN CRIMINAL PROCESS

Abstract: This article is devoted to types of facts on crime determined in criminal prosigal law and the concepts of evaluating criminal facts analyzed by scientific and comparative-legal side. Also useful recommendations are given about improvement the concepts of evaluating criminal facts.

Key words: types of facts, to prove, relevance, acceptability, reliability, adequacy.

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Introduction

Today, a number of foreign countries are making significant changes to improve the norms of criminal and criminal procedure legislation, to implement advanced international standards and foreign practice in order to ensure the rights and freedoms of citizens involved in criminal proceedings.

The Basic Laws of a number of countries also stipulate that a person accused of committing a crime may not be found guilty until his or her case has been tried in a lawful and public manner. From this point of view, in order to ensure the rights and freedoms of citizens, the Criminal Procedure Code also provides that a suspect, accused or defendant shall be presumed innocent until proven guilty in accordance with the law and a court verdict that has entered into force.

International experience in criminal cases shows that the analysis of the legal framework, practical application and results of the organization of pre-trial criminal proceedings shows that there are a number of problems in this area related to procedural theory and judicial practice. In particular, finding a scientific solution to the problems associated with the norms of criminal procedure law governing the evaluation of evidence and the practice of their application remains one of the most pressing issues.

Analysis and results

The purpose of criminal procedural proof is to determine the truth, in other words, the circumstances

of the case in accordance with the facts. The process of proof is regulated by law and is conducted in a certain procedural form. Criminal procedural law establishes rules for dealing with evidence. These rules include the collection, verification, and evaluation of evidence; requirements for evidence, subjects of proof, and so on.

Evaluation of evidence in criminal proceedings is the most important element of the evidentiary process. The main purpose of the evidence evaluation is to determine the facts about the circumstances that are relevant to the lawful, reasonable, and fair resolution of the case. [1]

The lexical meaning of the term "assessment" is to express an opinion about the importance and value of a person, thing or event.

Proof in the theory of criminal procedure is the activity of searching for information carriers, collecting information about the facts, their procedural consolidation, investigation and evaluation [2]. First of all, it should be noted that documentation and proof perform the same function [3] and are performed only by representatives of public authorities who have the corresponding legal rights and obligations.

As noted by legal scholars B. Mirensky, A. Asamutdinov and J. Kamalkhodjaev, "the assessment of evidence is a necessary condition for making legal and reasonable procedural decisions, the correct application of criminal law." [4]

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Evaluation of evidence on crimes identified in criminal proceedings provides a basis for a procedural decision on the case. It is impossible to imagine the process of gathering, researching, drawing conclusions, and making the right procedural decision without evaluation.

The essence of the evaluation of evidence is to determine their relevance, acceptability and reliability, as well as their sufficiency to find the circumstances that are the subject of evidence in a criminal case. The legislation sets out general requirements for the evaluation of evidence, which are unique to all stages of the criminal process. [5]

It is well known that by evaluating the evidence gathered, their relevance, validity and reliability are examined. But evaluating evidence is not exactly the same as evaluating evidence. Already, the collected data is evaluated in terms of being considered evidence. Evidence shall be considered evidence if the information confirms, refutes or doubts the conclusions about the circumstances relevant to the criminal case, about the facts or things collected in the prescribed manner and in accordance with the conditions and facts provided by the rules of procedural law.

The defense counsel also has the right to collect and present evidence in a criminal case, which must be attached to the criminal case file, as well as compulsorily assessed during the pre-trial investigation, inquiry, preliminary investigation and trial. These evidences include: interviewing persons with relevant information and obtaining written explanations with their consent; may be collected by sending inquiries to government agencies and other bodies, as well as enterprises, institutions and organizations, and obtaining from them references, descriptions, explanations and other documents.

Evidence is gathered not only through the conduct of investigative and judicial proceedings, but also through the acceptance of the items and documents presented. When evaluating the submitted objects and documents as evidence, it is necessary to take into account their features, which embody the necessary features, without which the submitted objects and documents can not be used as evidence.

These features include:

1) Relevance (that is, the fact that the evidence can serve as a means of determining the circumstances relevant to the case. In other words, the relevance is the validity of the evidence in terms of content);

2) Admissibility (in any state governed by the rule of law, evidence is considered admissible only if it meets the conditions provided for in the criminal procedure legislation and is collected in the prescribed manner);

3) Reliability (evidence found to be true as a result of an investigation is considered reliable);

4) Significance (the value of the evidence is its proof power);

5) Sufficiency (if all the convincing evidence of the case, which unequivocally confirms the truth of all and each case to be proved, is collected, their total is considered sufficient to resolve the case).

Evidence for crimes identified in criminal proceedings is evaluated on the basis of scientific validity and adherence to procedural rules.

Evaluation of evidence is not only a logical operation to determine the value, acceptability, reliability and other characteristics of the evidence, but also the process of forming such conclusions. Distinguishing the evaluation of evidence as a concluding element of the proof does not fully reflect its original role in the structure of the proof process. This is because the evaluation of the evidence is done throughout the whole process of proof.

Evaluating evidence is not limited to knowing their properties, because knowing and evaluating are not the same in their content. Assessment is not only knowledge, but also an attitude towards an object in the form of an opinion about it.

Evaluation of evidence is an independent element of proof, just as gathering and verifying evidence. As a result, there is a need to differentiate between evidence verification and evaluation. In the words of another jurist, AV Rudenko, "these two elements of proof can be distinguished only by one feature: that is, the evaluation of evidence is a separate thinking ability, and the activity of examining evidence has a practical aspect in addition to thinking. The results of the evidence review will need to be evaluated. Confirmation of the content of the evidence under investigation takes place at the time of obtaining information on the circumstances that are identical to the information on the circumstances contained in the evidence under investigation. [6]

It should be noted that the law provides that the assessment of evidence by state bodies and officials responsible for criminal proceedings, other participants in criminal proceedings (public prosecutor, defense counsel, victim, defendant, etc.) is only a decision of these bodies on the relevance, acceptability and reliability of evidence. have the right to appeal against the rulings in the manner prescribed by law.

The results of the comparative legal analysis show that the criminal justice legislation of foreign countries has the following approaches to the criteria for assessing the evidence:

the first approach: a set of evidence - must be evaluated in terms of its sufficiency to resolve the case (Article 127 Part 1 of the CPC of Armenia, Article 136 Part 1 of the CPC of Turkmenistan);

second approach: all the evidence gathered must be assessed in terms of its sufficiency to resolve the criminal case (Article 88 Part 1 of the CPC of the Russian Federation, Article 88 Part 1 of the CPC of Tajikistan, Article 95 Part 1 of the CPC of Kyrgyzstan, CPC of Kazakhstan 125 - Article 1 part);

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third approach: a set of evidence - to be assessed in terms of its sufficiency to complete the preliminary investigation and resolve the criminal case (Article 105, Part 1 of the Criminal Procedure Code of Belarus);

fourth approach: set of evidence - should be evaluated in terms of comparability of evidence (Article 101, Part 1 of the CPC of Moldova);

the fifth approach: all the evidence gathered in the criminal prosecution - their set should be assessed as sufficient to resolve the charge (Article 145 (1) of the CPC of Azerbaijan);

sixth approach: the set of evidence gathered is assessed in terms of its sufficiency and relevance for making a procedural decision correctly (Article 94 § 1 of the CPC of Ukraine). In most countries (Armenia, Belarus, Turkmenistan, the Russian Federation, Azerbaijan, Tajikistan, Ukraine, Kyrgyzstan, Kazakhstan), the sufficiency of evidence is defined as the criterion for assessing the set of evidence. In some countries, the comparability of evidence (Moldova) and the relevance of evidence (Ukraine) have been cited as criteria for evaluating a set of evidence. It should also be noted that in most countries (Russian Federation, Azerbaijan, Tajikistan, Kyrgyzstan, Kazakhstan) the issue under discussion is defined as an assessment of the whole set of evidence, not a set of evidence.

It appears from the analysis that it is generally accepted that the sufficiency of evidence is a criterion for evaluating a set of evidence.

Therefore, on the basis of scientific and theoretical and legal literature on criminal procedure of law enforcement agencies, as an important stage of the criminal process, the analysis of inquiries, investigative practices and available statistics, as well as the study of criminal procedure legislation of foreign countries, we found it necessary to quote our proposal.

In particular, a specialist is a person with special knowledge who is a participant in criminal proceedings. The expert's job is to assist in finding, gathering, consolidating, evaluating evidence,

assisting in formulating the questions posed to the expert, and assisting the body that appointed the expert in evaluating the expert's findings. The functions of the expert and the specialist in criminal proceedings are close to each other. However, in the criminal procedural legislation of many states, the legal status of an expert is not as fully defined as that of an expert. However, it must also be acknowledged that in some cases the expert will assist the inquiry officer, investigator, prosecutor and the court in determining the accuracy of the expert opinion and the research methods used in it. Therefore, in addition to the rules governing criminal proceedings, it is advisable to include the phrase "assessment of evidence."

For example, the Expert: the presence of the inquiry officer, investigator, prosecutor, summoned by the court; to participate in investigative actions and court proceedings using scientific and technical means, special knowledge and skills to find, evaluate and strengthen evidence; to draw the attention of the inquiry officer, investigator, prosecutor and court to the circumstances relevant to the establishment of the facts of the case; give explanations on the actions taken by him; to assist the inquiry officer, investigator, procurator and the court in determining the causes of the crime, the circumstances that led to its commission and in developing measures to eliminate them; failure to disclose the materials of the inquiry and preliminary investigation without the permission of the inquiry officer, investigator, prosecutor; must follow the procedure during the investigation of the case and the trial.

Conclusions

In short, the expected results of the improvement of criminal procedure legislation are the further improvement of criminal procedure legislation, taking into account the rapid development trends of the world community, reliable protection of the rights and freedoms of citizens, public and state interests, peace and security.

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