

ESSENTIAL CONDITIONS FOR PROVING (EVIDENCE)

Nomazov Ikhtiyor Ismailovich

Tashkent State University of Law

Independent Researcher

+998975852078

ixtiyornomazov78@gmail.com

Abstract: This article is dedicated to the theoretical and practical analysis of the essential conditions that ensure the effectiveness and legality of proving (do-kazyvanie) activity within the criminal process. The research reveals the core fundamental conditions that define the essence of proving: adherence to the procedural form, ensuring the principle of legality, and the condition of protection of human rights and freedoms. The article thoroughly examines how the violation of these specific conditions serves as a basis for deeming evidence inadmissible, which subsequently obstructs the fair resolution of the criminal case. Furthermore, the interconnectedness of conditions related to the quality of evidence (relevance, admissibility, and reliability) that ensure the success of the proving process is analyzed, and the procedural significance of their proper formation is substantiated. The conclusions present scholarly proposals aimed at perfecting the conditions for proving in the Criminal Procedure legislation of Uzbekistan and preventing shortcomings in law enforcement practice.

Key words: Conditions of proof, criminal process, proving, evidence, procedural form, legality, human rights, admissibility of evidence, reliability of evidence, relevance of evidence, collection of evidence.

State bodies responsible for conducting criminal cases must first and foremost take measures to effectively protect the rights and freedoms of the individual when evaluating evidence. In this regard, as stated by the President of the Republic of Uzbekistan Sh.M. Mirziyoyev, "The people should not serve state bodies, but rather state bodies should serve our people". In the conduct of criminal cases, the subject of evidence evaluation carries out their activities based on the evidence. Evidence serves to establish the truth of the case, to find a correct and legal solution to the proof of the criminal case, and to issue a fair decision on every procedural action undertaken. In criminal procedure literature, various definitions of the concept of evidence are provided. The procedural scholar G.Z. Tulaganova defined it as: "Evidence consists of information related to facts; facts that do not fall within the subject and scope of proof are not recognized as evidence. Furthermore, in the human mind (perception), it is not the objects and things themselves that exist, but rather their images, concepts (essence/content), and information about them". E.F. Kutsova considers that "the system of evidence is an action by the legislator regarding the recognition of evidence, which allows for the establishment of provable circumstances (events/incidents) and their correspondence to the truth"[1]. According to P.S. Abdullaev, "evidence can be any information, and the existence or non-existence of circumstances relevant to the case must be determined by the subjects of evidence evaluation"[2]. N.V. Savelyeva, in this regard, expressed the opinion that "all facts, arguments, and information should be considered evidence in the theory of criminal procedure legislation"[3].

An analysis of the views of these procedural scholars suggests that, in clarifying the concept of evidence, they relied on specific facts, information collected within the scope of proof, facts corresponding to the truth, and any information whatsoever. In our opinion, it is appropriate to pay attention to certain aspects: namely, information that serves to uncover new crimes in the future is also considered evidence, regardless of its source, and the information provided by individuals involved in the proving process also occupies a significant place in resolving the criminal case.

V.Ya. Dorokhov explained his view on evidence as follows: "Evidence is information related to facts, but facts belonging to the subject of proof are not considered evidence, and reliable information is evidence collected on the basis of sources specified in the law"[4]. In this regard, in our view, only information linked to facts and based on the principles of material life is recognized as evidence, while information related to psychological factors is not fully substantiated.

Having studied and analyzed all these views, we propose the following definition for the concept of evidence: "Evidence is the totality of information that reflects the principles of truth of other participants, which is determined by the subject of evidence evaluation, and the facts that arise in the human mind as a result of external influence"[5].

Information and objects can be used as evidence only after they have been recorded in the protocol of an investigative action or the protocol of a court session. The responsibility for keeping protocols lies with the inquiry officer and the investigator at the stage of inquiry and preliminary investigation, and with the presiding judge and the court session secretary in court.

As stipulated in the Criminal Procedure Code, the protocols must include:

- Information about the participants in the investigative or judicial action, and that their rights and obligations were explained to these persons;
- The place, time, conditions, process, and results of the investigative or judicial action, including a description of any material objects found and their characteristics relevant to the case;
- Facts that participants in the investigative action or judicial review requested to be confirmed; their testimonies, explanations, and opinions regarding the causes of the event;
- Motions, complaints, and challenges submitted by them;
- Instances of violations of order during the investigative action or judicial review, as well as measures taken to eliminate and prevent these violations.

In addition to drawing up a protocol for recording evidence, other methods of information reflection such as audio recording, video recording, filming, photographing, making casts, taking copies, and preparing plans and diagrams may be used. The inquiry officer, investigator, or court may involve specialists to assist in applying these methods of evidence consolidation. The methods of recording evidence used by the inquiry officer, investigator, or court, along with the technical description of the apparatuses, instruments, equipment, and materials utilized, are reflected in the corresponding protocol of the investigative action or the protocol of the court session.

Evidence possesses the following characteristics:

- Factual information relevant to the criminal case;
- Being obtained from sources consolidated in the norms of criminal procedural legislation;
- Being based on information about all circumstances significant for the correct and legal resolution of the criminal case;

- Information collected based on the reliability of verification results within the scope of the subject of proof;
- Admissibility based on its conformity to the truth.

Article 81 of the Criminal Procedure Code stipulates that any factual information that serves as a basis for the inquiry officer, investigator, and court to determine, in the manner prescribed by law, whether or not a socially dangerous act occurred, the guilt or innocence of the person who committed that act, and other circumstances relevant to the correct resolution of the case, shall be considered evidence in a criminal case.

This information is established by the testimony of a witness, victim, suspect, accused, or defendant, the expert's conclusion, material, written, and digital evidence, materials consisting of audio recordings, video recordings, films, and photographs, protocols of investigative and judicial actions, and other documents[6].

The results of operational-search activities may be recognized as evidence only if they were obtained in accordance with the law's requirements, were verified and evaluated in compliance with the norms of the Criminal Procedure Code, and indicate the existence of an intent to commit a crime that was formed in the person independently of the actions of law enforcement officers or other persons who participated in the operational-search activity.

According to the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 17 dated 13.12.2012, "On some issues of applying legislation related to material evidence in criminal cases," any object that may serve to establish circumstances relevant to ascertaining the truth in a criminal case and possesses physical signs or features is recognized as material evidence.

The following types of objects recognized as material evidence are envisaged:

- Objects specially intended, prepared, or adapted for preparing or committing a crime, which are recognized as evidence (e.g., murder weapons, objects used as means for plundering or seizing valuables, firearms, poaching tools—traps, nets, forged documents, etc.), as well as property directly used in the commission of a crime to achieve a criminal goal (e.g., vehicles);
- Objects retaining traces of the crime (e.g., clothing or objects with blood stains or damaged during the commission of the crime, including objects damaged by shooting or explosion, traces of fingers, hands, feet, footwear, transport, breaking tools, etc.);
- Objects that were the object of criminal acts (e.g., a stolen vehicle, plundered money, securities, weapons, narcotic drugs, other material valuables, items, etc.);
- Property, money, and other valuables acquired after the commission of criminal acts with criminally obtained funds (e.g., valuables purchased with stolen money, cash, raw materials and items consisting of rare metals and stones, and other valuables obtained as a result of criminal activity, including illegal entrepreneurship).

In the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 24 dated 24.08.2018, "On some issues of applying the norms of the criminal procedural law on the admissibility of evidence," it is established that any deviation by the inquiry officer, investigator, prosecutor, or court from the precise fulfillment and observance of the law's norms, regardless of the reason for the deviation, shall lead to the evidence obtained in that manner being found inadmissible (invalid). Inadmissible evidence does not have legal force, and it cannot be used to prove the circumstances stipulated in Articles 82–84 of the Criminal Procedure Code, nor can it be placed as the basis for an accusation.

Depending on the source of their acquisition, evidence is divided into primary and derivative evidence:

- Primary evidence is evidence where information about the circumstance to be established is obtained from the initial source. For example, the testimony of a witness based on their personal observations and the protocol of their interrogation are considered primary evidence. An expert's conclusion is also recognized as primary evidence;
- Derivative evidence is evidence where information about the circumstance to be proven is obtained not from the initial source, but from another source, or in simple terms, from a "secondary source".

Based on the function of accusation and acquittal, evidence is divided into inculpatory and exculpatory evidence:

- Inculpatory evidence consists of evidence confirming the person's guilt in committing a crime or the existence of circumstances that aggravate the sentence;
- Exculpatory evidence consists of evidence regarding the person's innocence or circumstances that mitigate the punishment.

Based on the purpose of proof, evidence is divided into direct and indirect evidence concerning a person's guilt or innocence:

- Direct evidence is evidence that directly confirms the commission of the crime;
- Indirect evidence is evidence that indirectly confirms the commission of the crime.

In conclusion, the proving process in criminal proceedings utilizes evidence classified as primary and derivative evidence, inculpatory and exculpatory evidence, direct and indirect evidence, personal and material evidence, as well as verifying evidence. The correct classification of every piece of evidence also serves the principal tasks of the criminal process: the swift and complete disclosure of crimes, ensuring that innocent persons are not prosecuted, and the exposure of the guilty.

REFERENCES:

1. Shavkat Mirziyoyev. We will build a free and prosperous, democratic Uzbekistan state together. // "Uzbekistan" NMIU. Tashkent – 2016. – P. 19.
2. Tulaganova G.Z., Criminal Procedure Law. General Part. Textbook. Collective of authors // under the general editorship of D.Sc. in Law, Prof. G.Z. Tulaganova, Ph.D. in Law, Assoc. Prof. S.M. Rakhmonova. – Tashkent. TSUL Publishing House. 2017. – P. 77.
3. Kutsova E.F. Evidence is an element of the factual basis of criminal procedural decisions // Vestn. Mosk. un-ta. Ser. Pravo. 2011. No. 3. pp. 35–36.
4. Abdullaev P.S. The concept of evidence in the criminal procedural law of Russia (topical issues) // Vestnik Moskovskogo universiteta. No. 11. 2012. – pp. 99-109.
5. Savelyeva N. V. Problems of evidence and proving in criminal procedure: Textbook. // N. V. Savelyeva. – Krasnodar : KubSAU, 2019. – P. 6.
6. Dorokhov V.Ya. Theory of evidence in criminal procedure. / Ed. N.V. Zhogina. - M.: 1973. - P. 224.