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Some problems of ensuring the admissibility of evidence in criminal law cases and their solutions

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ABSTRACT

This article analyzes the admissibility of evidence in criminal proceedings. The norms of the Criminal Procedure Code of the Republic of Uzbekistan on the admissibility of evidence were analyzed. Based on the results of the analysis and research, the author's substantiated proposals and recommendations were developed.

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Жиноят ишларини юритишда далиллар мақбуллигини таъминлашнинг айрим муаммолари ва уларнинг ечимлари

Калит сўзлар:
Жиноят,
далил,
мақбуллик,
далилларни тўплаш,
далилларни текшириш,
далилларни баҳолаш,
исбот қилиш.

АННОТАЦИЯ

Мазкур мақолада жиноят процессида далиллар мақбуллигини таъминлаш масалалари таҳлил қилинган. Ўзбекистон Республикасининг Жиноят-процессуал кодексининг далиллар мақбуллигига доир нормалари тадқиқ қилинган. Таҳлил ва тадқиқотлар натижаларига кўра муаллифнинг асослантирилган таклиф ва тавсиялари ишлаб чиқилган.

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Некоторые проблемы обеспечения допустимости доказательств в уголовном судопроизводстве и пути их решения

Ключевые слова:
преступление,
доказательство,
допустимость,
собирание доказательств,
проверка доказательств,
оценка доказательств,
доказывание.

АННОТАЦИЯ

В данной статье анализируются вопросы обеспечения допустимости доказательств в уголовном процессе. Исследованы нормы Уголовно-процессуального кодекса Республики Узбекистан, касающиеся допустимости доказательств. На основе результатов анализа и исследований разработаны обоснованные предложения и рекомендации автора.

In our country, the regulatory legal documents adopted during the judicial reform aimed at strengthening the protection of individual rights during the investigation, pre-investigation, and trial are aimed at strengthening the guarantees of the rights and legitimate interests of persons participating in the criminal process, in particular the suspect and the accused.

In recent years, to improve the efficiency of activities to identify, collect, verify, evaluate, and ensure the admissibility of evidence, several laws and regulatory legal documents have been adopted in Uzbekistan, and an analysis of criminal cases is being conducted. The Criminal Procedure Code and the work of law enforcement agencies show that the activities to ensure the admissibility of evidence are not carried out sufficiently, and there are legal gaps and mutually incompatible norms in the legal norms.

This makes it necessary to first study the provisions of the Criminal Procedure Code.

After all, the admissibility of evidence collected in the established manner by Part Three of Article 95 of the CPC is subject to the conditions specified in Article 5 of the CPC.

That is, according to him, “evidence is considered admissible only if it is collected in the established manner and meets the conditions stipulated by Articles 88, 90, 92-94 of this CPC.”

Summarizing these rules, we can say that **evidence is admissible:**

first of all, the procedure for collecting it established by law has been observed;

secondly, the evidence must meet the conditions provided for in Articles 88, 90, 92-94 of the CPC.

If the evidence is collected in accordance with the law, but does not meet the conditions provided for in Articles 88, 90, 92-94 of the CPC, it cannot be considered admissible evidence and used in a criminal case.

Similarly, if it meets the conditions provided for in Articles 88, 90, 92-94 of the CPC, but the evidence is not collected in the manner established by law, it cannot be assessed as admissible evidence.

Moreover, in order to avoid different interpretations of the requirements of the criminal procedure law at the pre-trial investigation, investigative and judicial stages of the criminal process before the start of the investigation, the subjects carrying out the proof must be aware of their high responsibility.

As stated in the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated August 24, 2018 No. 24 “On some issues of the application of the norms of the criminal procedure law on the admissibility of evidence”, “Any deviation from the

exact implementation and observance of the norms of the law by the investigator, prosecutor and the court, regardless of the reason for which this occurred, evidence obtained in this way is considered inadmissible (invalid) brings".

Inadmissible evidence has no legal force, cannot be used to prove cases provided for in Articles 82-84 of the CPC, and cannot be used as grounds for prosecution.

Cases of using inadmissible evidence as a basis for charges in criminal proceedings are not uncommon in the activities of investigative bodies and courts, and these cases can be seen in the example of acquittals handed down by the courts of our country in recent years.

In particular, the fact that in 2023, **1,244 people** were acquitted and rehabilitated by the courts shows that this opinion is justified.

It is worth noting that the analysis of acquittals allows for a more in-depth study of the current state of ensuring the admissibility of evidence in criminal proceedings, existing problems, and violations of the law in the process of collecting, verifying, and evaluating evidence.

In addition, it will be possible to assess the quality of the investigation, investigation, and trial even before the investigation begins by studying acquittals.

According to D.Dj. Suyunova, Y.Y. Konyushenko, N.S. Ngindip, "The procedural significance of acquittal is one of the most important procedural methods of acquitting the defendant and ending injustice. It not only provides a conclusion on the procedural errors made by the preliminary investigation bodies but also eliminates this error by rehabilitating the defendant found not guilty. The acquittal verdict summarizes all previous procedural actions.".

It should be noted separately that the core of the concept of acceptable evidence or unacceptable evidence is the term "evidence". Evidence found inadmissible in proceedings will be deprived of the status of evidence and will not be allowed to be used at subsequent stages of the criminal process.

In our opinion, the use of the term "evidence" to designate inadmissible evidence that will not be used at subsequent stages of criminal proceedings does not comply with the rules of logic. Because, according to Article 81 of the CPC, the basis of evidence is real information.

Evidence considered inadmissible always raises doubts as to whether it contains true information or may contain false information.

For this reason, in our opinion, it is appropriate to use the term "evidence" in the theory of criminal proceedings and in law only in relation to admissible evidence.

E.E. Kurziner rightly noted, "Acceptable evidence should be recognized as evidence that does not raise doubts about the reliability of evidence and the observance of constitutional rights and legitimate interests of citizens.".

E.A. Kupryashina in her research work focused on the problem of "Inadmissible evidence" and emphasized that such information has no legal force and cannot be used as a basis for an accusation, it is proposed to replace "inadmissible evidence" with "other information obtained in violation of the requirements of the Code.".

In this case, we fully agree with the opinion of E.A. Kupryashina and believe that it is incorrect to call this information in any form (for example, inadmissible evidence), if the evidence was obtained in violation of the requirements established by the criminal procedure legislation. .

It should be noted that when analyzing the criminal procedure legislation of foreign countries in this regard, one can see that there are different approaches in this regard.

For example, in Article 105 of the Criminal Procedure Code of the **Republic of Armenia**, the sentence **"materials considered inadmissible as evidence"** is used instead of the sentence "inadmissibility of evidence". Of course, this can be considered a positive experience.

In Article 94 of the Criminal Procedure Code of the **Republic of Moldova**, the sentence **"Information considered inadmissible as evidence"** is used instead of the sentence "inadmissibility of evidence".

Article 319 of the Criminal Procedure Law of **Japan** prohibits confessions obtained under duress, torture or intimidation, confessions obtained after prolonged detention, as well as any forced confessions. It is established that testimony and confessions are not only admissible or inadmissible evidence, but are also not evidence at all. That is, in Japanese criminal procedure law, instead of "inadmissible evidence", information that is not considered evidence is used.

In our opinion, it is advisable to apply this positive experience of the criminal procedure legislation of such countries as Armenia, Moldova, and Japan to the Criminal Procedure Code of the Republic of Uzbekistan.

At the moment, the criminal procedure legislation of several foreign countries that we have studied establishes that no evidence has a pre-established legal force (Article 136 of the CPC of Turkmenistan, Article 88 of the CPC of Tajikistan,, Article 82 of the CPC of Georgia, Article 101 of the CPC of Moldova, Article 61 of the CPC of Estonia, Article 94 of the CPC of Ukraine)).

These analyses determine that not only inadmissible but also admissible evidence do not have a pre-established legal force, and, in our opinion, this norm can be assessed as a positive experience of criminal procedural law of foreign countries.

It should be separately noted that the criminal procedural law does not develop a clear definition of the admissibility of evidence, but only has a reference disposition, which complicates the understanding of the detailed procedure.

More precisely, *firstly,* the legislator in Article 95 of the Code of Criminal Procedure limits himself to a reference to compliance with the provisions of Articles 87, 88, 90, 92-94 of this law, without expressing in clear sentences the requirements in which cases evidence may be admissible; *secondly,* although Article 95-1 of the Code of Criminal Procedure contains information that should be recognized as inadmissible as evidence, these procedural rules repeated the procedural rules of some provisions of the law; *thirdly,* it is difficult to compile a clear list of violations of the law contained in Article 95-1 of the Criminal Procedure Code, which states that evidence is not considered admissible in the event of actions that contradict this law, and this list includes several The requirements of the Code, which do not have a clear boundary, in the context of the sentence "obtained in violation of the requirements of this Code" in this article are imbued with content.

Therefore, in our opinion, it is advisable to develop the necessary recommendations to eliminate in the future the specified gaps and inconsistencies in the legislation, as well as to prevent violations of the law in this regard by entities carrying out proof.

Considering that the issue of determining the admissibility of evidence is decided as a result of the assessment of the entities carrying out their proof, it is necessary to pay special attention to the obligation to take into account the following:

firstly, whether the person authorized to perform procedural actions aimed at establishing evidence has the right to perform this action or not;

secondly, the admissibility of the source constituting the content of the evidence;

thirdly, that the procedural actions performed to collect evidence comply with the requirements of the law;

fourthly, it is necessary to check and evaluate the correctness of the performance of the procedural action, which serves as a means of collecting evidence.

Assessing the admissibility of evidence requires, first of all, that the subjects of proof have the necessary knowledge, skills and qualifications in the field of jurisprudence, in particular, in the field of criminal procedural law, and in accordance with the requirements of regulatory legal documents issued by legislative and competent authorities in this regard.

Already in the first part of Article 95 of the Code of Criminal Procedure, which determines the rules for assessing evidence, the subjects of proof must, on the basis of a thorough, complete, comprehensive and impartial consideration of all the circumstances of the case, follow the law and legal consciousness to the evidence based on their internal convictions. It is not for nothing that he must give an assessment.

The analysis of criminal cases conducted by the judicial investigation bodies does not deny that the same evidence is assessed differently by two subjects. This position is confirmed by the analysis of the studied acquittals.

It should be noted separately that different approaches to the assessment of evidence cannot be fully explained by the legal literacy of the subjects of proof. Because it is important to take into account the differences between the powers and interests of the investigator, the investigator, the prosecutor and the court when assessing evidence in this case. Because the investigator, the investigator, the prosecutor when assessing evidence are more focused on substantiating the charges in court. The court acts within the powers established by the criminal procedure law, not being bound by these obligations when assessing evidence.

However, unlike the above situation, it can be said that the investigator, the investigator and the prosecutor, who are not familiar with the requirements of the law and have superficial legal knowledge, may consider inadmissible evidence acceptable, attach it to the case and make decisions based on this.

Therefore, in our opinion, it is advisable to develop proposals and recommendations for enriching the knowledge of the subjects of proof responsible for determining the admissibility of evidence so that they do not violate the law in this regard in the future.

It should be noted here that the subjects of proof responsible for determining the admissibility of evidence in a number of cases do not follow the rules of the science of “Logics” in the process of assessing evidence.

After all, compliance with logical laws is a necessary condition for criminal procedural knowledge, since it guarantees the achievement of real results in solving problems that arise in the process of cognition, therefore, in the process of proving violations of legal instructions and logical laws should not be allowed to the same extent.

E.D. Gorevoy emphasizes in his study that logical thinking is of paramount importance in assessing evidence. He argues that "the logical element shows the assessment of evidence as a mental activity that is carried out in accordance with the basic laws of formal logic, in accordance with the scientific methodology of cognition and is associated with reflections on the value of evidentiary information".

One can fully agree with this opinion, according to Article 95 of the Criminal Procedure Code, "The investigator, investigator, prosecutor and court evaluate evidence based on their **internal convictions**, based on a thorough, complete, comprehensive and impartial consideration of all circumstances of the case, following the law and legal awareness." Internal confidence is closely related to the rule of law and legal awareness, as well as the logical thinking abilities of the investigator, inquiry officer, prosecutor and court.

Therefore, in conclusion from the above analysis, in our opinion, it is appropriate to recommend the following so that the subjects of proof responsible for determining the admissibility of evidence do not allow themselves to violate the law in this regard in the future:

the enrichment of lecture courses and work programs of higher education institutions of law enforcement agencies with examples, cases and cases reflecting cases of violation of the requirements of the legislation on the admissibility of evidence in forensic practice;

organizing one-day training courses for investigators and investigators on the topic of "Procedural requirements of the legislation on the admissibility of evidence and shortcomings in their implementation" with the involvement of experienced professors and teachers of higher education institutions subordinate to law enforcement agencies, and experienced workers in the field at least twice a year for employment and transfer;

including a new subject "Logical thinking" in the curricula of higher education institutions subordinate to law enforcement agencies, and ensure its teaching after the semester in which the subject "Logics" (training module, etc.).

In our opinion, consideration of these proposals and recommendations will serve to resolve a number of issues related to the admissibility of evidence and will serve to eliminate gaps in this regard.

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