International Journal of Research
ISSN: 2348-6848 Vol-6, Special Issue-5
3rdEduINDEX International Multidisciplinary Conferenceheld
on6-7th April 2019 at **Edupedia Publications Pvt Ltd**, New Delhi

# EVALUATION OF EVIDENCE IN CRIMINAL PROCEEDINGS

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***Annotation****. The article presents a scientific-theoretical analysis of the concept of evidence evaluation in criminal proceedings and the opinion of leading scientists on the criteria for evaluating evidence, as well as the results of a comparative legal study of the regulation of evidence evaluation issues in the criminal procedural law of some foreign countries. Based on the results of the analysis and research, recommendations and proposals were put forward for the introduction of positive experience in national legislation, improvement of procedural rules on the criteria for evaluating evidence and expanding the range of subjects carrying out evidence.*

***Key words****: evidence in criminal procedure, evaluation of evidence, proving, investigator, prosecutor, court, judge, pertinence, admissibility, reliability, sufficiency.*

Evaluation of evidence and the search for scientific solutions to the problems of criminal procedure legislation and the practice of their application is one of the topical problems of the theory of procedural criminal law.

Lexical meaning of the term “evaluation” means *an opinion about the value equivalence of someone, something* [21,c. 194].

Evaluation of evidence is recognized as an essential element of substantiation process. «Of course, it is difficult, and in many ways impossible tosome kind of clear boundaries between all the structural elements of criminal procedural substantiation. Because all of them are in a complex and close relationship and express certain aspects of a single process of substantiation» [3,c.184].

It should be noted that «identification evidence is evaluated at all stages of the process» [22, p. 126-127]. The main purpose of the evaluation of evidence is to establish the truth about the circumstances that are important for the legal, reasonable and fair resolution of the case.

As A.B. Mirensky, A. Asamutdinov, Z. Kamalhodzhaev correctly noted, “evaluation of evidence serves as an important condition for the purposeful conduction of investigation and litigation proceedings, adoption of lawful and reasonable procedural decisions, and proper application of criminal law” [7, p.55]. “Evaluation of evidence sets the stage for a procedural decision on the case. Without evaluation, it is impossible to imagine the process of collecting, examining evidence, concluding and making the correct procedural decision”[26].

The legislator paid attention to the issue connected with the definition of *evidence evaluation.* In particular, according to article 95 part 1 of the Code of Criminal Procedure (hereinafter the CCP) "Investigator, interrogator, prosecutor and law-court evaluates evidence according to their inner conviction based on a thorough, comprehensive, full and objective investigation of all the circumstances of the case, guided by law and legal conscience. Each of the evidence is subject to evaluation in terms of pertinence, admissibility and reliability"[17].

In today's period of rapid development of science and technology, it became necessary to improve the evaluation of evidence and the procedure for evaluating evidence based on modern requirements and practical needs.

In the course of the research, the essence and content of the concept of evaluating evidence were thoroughly analyzed and, through a comparative legal analysis of the criminal procedural legislation of foreign countries, a circle of subjects of evidence evaluation was studied.

According to the results of comparative legal analysis in criminal procedural legislation of foreign countries to the subjects, evaluating the evidence include:

1) in Russian Federation (article 88, part 2 of the CCP) [18] and Kazakhstan (article 125, part 2 of the CCP) [14] the investigator, interrogator, prosecutor and law-court;

2) in Armenia (article 127, part 2 of the CPC) [12] the investigator, investigator, prosecutor, judge, in Tajikistan (article 88, part 1 of the CCP) [16] and Turkmenistan (article 136, part 1 of the CCP) [19] investigator, interrogator, prosecutor, law-court and judge;

3) in Kyrgyzstan (article 95, part 2 of the CCP) [11] an authorized official of the body of inquiry, investigator, prosecutor, jury and law-court;

4) in Belarus (article 105, part 6 of the CCP) [13] the criminal investigating authority and law-court;

5) in Moldova (article 101, part 2 of the CCP) [15] a representative of the criminal investigating authority and a judge;

6) in Ukraine (article 94, part 1 of the CCP) [20] an investigator, prosecutor, investigating judge and law-court;

7) in Estonia (article 61, part 2 of the CCP) [18] only law-court.

Based on this, we can conclude that, unlike the criminal procedural legislation of the Republic of Uzbekistan includes judge, representative of the criminal prosecution body, and jury in the circle of subjects evaluating evidence in foreign countries.

According to the analysis carried out, the scientific and theoretical literature contains the following approaches for subjects evaluating evidence:

*first approach:* investigator, interrogator, prosecutor, law-court (Z. F. Inogomdjonova, G.Z. Tulaganova [6 p. 94], A. Prokopenko [8 p. 14], G. Yangiev [24]);

*second approach:* investigator, interrogator, prosecutor, law-court, judge (B.A. Mirensky [7 p.139], F.V. Chirkov [23 pp. 9-10], S.A. Zaytseva [5 p. 8]);

*third approach:* investigator, interrogator, prosecutor, judge (B.T. Akramkhodzhayev [23 pp. 126-127], D.M.Mirazov, I.E. Hozhanazarov, Sh.N. Berdiyarov [4 pp. 110-112 ]);

*fourth approach:* subjects of proof (Y.V. Zhdanova) [2 pp.7-11];

*fifth approach:* subjects of criminal procedural knowledge (Yu.Yu. Vorobiova [1 p. 8]).

It is noticeable that broad sections of experts interpret the range of subjects for evaluating evidence (B.A. Mirensky, F.V. Chirkov, S.A. Zaitsev, Y.Yu. Vorobyova, Ya.V. Zhdanov) and narrow section of experts (B.T. Akramhodzhaev , D.M.Mirazov, I.E. Khozhanazarov, Sh.N. Berdiyarov). We consider it important to support the opinions of experts (B.A. Mirensky, F.V. Chirkova, S.A. Zaitseva, B.T. Akramkhodzhayev, D.M. Mirazov, I.E. Khozhanazarova, S.N. Berdiyarov) on the inclusion judges in the range of subjects of evidence evaluation.

It is worth noting that in article 95, part 1 of the Code of Criminal Procedure of the Republic of Uzbekistan, evaluation of evidence by the investigator, interrogator, prosecutor, law-court [24] is fixed. Based on some of the above circumstances (the experience of Armenia, Moldova, Ukraine, Tajikistan, Turkmenistan) and scientifically based views of specialists, taking into account national peculiarities, it is expedient to expand the range of subjects for evaluating evidence by including judges in this provision of the Code of Criminal Procedure.

In addition, it is appropriate to note that based on the results of the comparative legal analysis, the following rules for evaluating evidence are defined in the criminal procedural legislation of foreign countries:

1) pertinence, admissibility, reliability of evidence (article 105, part 1 of the Code of the Criminal Procedure of Belarus [13], article 88, part 1 of the Code of the Criminal Procedure of Russian Federation [18], article 94, part 1 of the Code of the Criminal Procedure of Ukraine [20], article 95, part 1 of the Code of the Criminal Procedure of Kyrgyzstan [11], article 125, part 1 of the Code of Criminal Procedure of Kazakhstan [14], article 88, part 1 of the Code of Criminal Procedure of Tajikistan [16]);

2) involvement, admissibility of evidence (article 127, part 1 of the Code of the Criminal Procedure of Armenia) [12], pertinence and admissibility (article 136, part 1 of the Code of Criminal Procedure of Turkmenistan [19]);

3) pertinence to the criminal case, admissibility and reliability (article 82, part 1 of the Code of the Criminal Procedure of Georgia [10]);

4) pertinence, materiality, admissibility and reliability (article 101, part 1 of the Code of the Criminal Procedure of Moldova [15]);

5) ownership, possibility, reliability of evidence (article 145, part 1 of the

Code of Criminal Procedure of Azerbaijan [9]).

Based on the results of these analyzes, it can be concluded that, in contrast to the laws of our country, foreign countries have determined the evaluation of each evidence in terms of its materiality and capabilities.

In the scientific-theoretical literature put forward the following positions on the rules for evaluating evidence:

first: pertinence, admissibility and reliability of evidence (B.T. Akramhodzhaev [22], B. Mirensky, A. Asamutdinov, J. Kamakhodzhaev [7], D.M. Mirazov, I. Khozhanazarov, Sh.N. Berdiyarov [4, pp. 110-112]);

second: pertinence, admissibility, reliability and sufficiency (Z.F. Inogzhonova, G.Z. Tulaganov [6 p. 94]);

third: pertinence, admissibility, materiality and sufficiency for establishing the circumstances included in the subject of proof in a criminal case. (B.A. Mirensky [22, p. 139]);

fourth: materiality, admissibility and reliability of evidence (Y.V. Zhdanova [2 p. 7-11]);

fifth: materiality, admissibility, reliability, and the sufficiency of evidence for establishing the circumstances and facts essential for the criminal case (A.A. Prokopenko [8 p.14]);

sixth: relativity, admissibility, reliability and sufficiency of evidence (F.V. Chirkov [23 pp. 9-10]);

seventh: relativity, admissibility, reliability, sufficiency and interconnectedness of evidence (S.A. Zaitsev [5 p. 8]);

eighth: authenticity, strength, ability to become a basis for conclusions on the case (E.N. Nikiforova [3 p. 184]).

We can not subscribe to the opinions of experts on the inclusion in the rules of evaluation of evidence and their sufficiency. Because the sufficiency of evidence is considered to be the criterion for evaluating not only evidence in a criminal case, but body of evidence.

Supporting the views on the inclusion of materiality of evidence in the rules for evaluating evidence, it should be noted that the definition of this rule will serve to prevent unnecessary work on the evaluation of all, especially irrelevant evidence in a criminal case.

It should be noted that in article 95, part 1 of the Code of Criminal Procedure of the Republic of Uzbekistan it is noted that each of the evidence is subject to evaluation from the point of view of pertinence, admissibility and reliability [17]. According to above analysis results, we consider it expedient to define in this Code of Criminal Procedure the rule of materiality for evaluating each evidence.

In conclusion, we believe that the expression in national legislation of the proposals and recommendations we made will serve to make legal, reasonable and

fair sentences in criminal cases.

## Список литературы/ References:

1. Воробьева Ю.Ю. Современные проблемы процесса доказывания в российском уголовном судопроизводстве: Автореферат диссертации на соискание ученой степени кандидата юридических наук: – Оренбург, 2006. – 22 с.

2. Жданова Я.В. Проблемы вероятного и достоверного в уголовно-процессуальном доказывании и их влияние на принятие отдельных процессуальных решений следователем:Автореферат диссертации на соискание ученой степени кандидата юридических наук. – Ижевск, 2004. – 34 с.

3. Жиноят процесси. Умумий □исм: Дарслик / Муаллифлар жамоаси. – Т.: Янги аср авлоди, 2002. – Б. 184.

4. Жиноят процесси: Ў□ув □ўлланма / Д.М. Миразов, И.Э. Хожаназаров, Ш.Н. Бердияров. – Т.: Ўзбекистон Республикаси ИИВ Академияси, 2013. – Б. 110-112.

5. Зайцева С.А. Оценка доказательств в российском уголовном процессе: Автореферат диссертации на соискание ученой степени кандидата юридических наук. – Саратов, 1999. – 24 с.

6. Ино□омжонова З.Ф., Тўлаганова Г.З. Жиноят процесси муаммолари: Ў□ув □ўлланма. – Т.: ТДЮИ, 2006. – 380 б.

7. Миренский Б., Асамутдинов А., Камалходжаев Ж. Проблемы теории доказательств в уголовном процессе: Учебник. – Т.: Академия МВД Республики Узбекистан, 2003. – 381 с.

8. Прокопенко А.А. Оценка доказательств в ходе рассмотрения уголовного деласудом первой инстанции: Автореферат диссертации на соискание ученой степени кандидата юридических наук. – Краснодар, 2009. – 27 с.

9. Уголовно-процессуальный кодекс Азербайджанской Республики от 14 июля 2000 года (По состоянию на 01.12.2017) // http://base.spinform.ru (База данных законодательство стран СНГ).

10. Уголовно-процессуальный кодекс Грузии от 9 октября 2009 года (По состоянию на 01.01.2016) // https://www.legislationline.org/documents/section/criminal-codes (Бесплатная онлайновая законодательная база данных).

11. Уголовно-процессуальный кодекс Кыргызской Республики от 2 февраля 2017 года (По состоянию на 10.11.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

12. Уголовно-процессуальный кодекс Республики Арменияот 1 сентября 1998 года (По состоянию на 30.03.2018) // http://base.spinform.ru (База данных

законодательство стран СНГ).

13. Уголовно-процессуальный кодекс Республики Беларусь от 16 июля 1999 года (По состоянию на 08.01.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

14. Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года (По состоянию на 12.07.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

15. Уголовно-процессуальный кодекс Республики Молдова от 14 марта 2003 года (По состоянию на 23.03.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

16. Уголовно-процессуальный кодекс Республики Таджикистан от 3 декабря 2009 года (По состоянию на 17.05.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

17. Уголовно-процессуальный кодекс Республики Узбекистан (по состоянию на 10.11.2018 год) // http://lex.uz (Национальная база данных законодательных актов Республики Узбекистан).

18. Уголовно-процессуальный кодекс Российской Федерации от 18 декабря 2001 года (По состоянию на 30.10.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

19. Уголовно-процессуальный кодекс Туркменистана от 18 апреля 2009 года (По состоянию на 09.06.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

20. Уголовный процессуальный кодекс Украиныот 13 апреля 2012 года (По состоянию на 12.07.2018) // http://base.spinform.ru (База данных законодательство стран СНГ).

21. Ўзбек тилининг изо□ли лу□ати: 80 000 дан орти□ сўз ва сўз бирикмаси. Ж. I. – Т.: «Ўзбекистон миллий энциклопедияси» Давлат илмий нашриёти, 2006. – Б. 194.

22. Ўзбекистон Республикасининг жиноят процесси: Дарслик // Б.А. Миренский, А.Х. Ра□мон□улов, Д. Камалходжаев, В.В. Кадирова ва бош□. – Т.: Ўзбекистон Республикаси ИИВ Академияси, 2012. – 635 б.

23. Чирков Ф.В. Оценка доказательств в ходе окончания предварительного следствия: автореферат диссертации на соискание ученой степени кандидата юридических наук. – Краснодар, 2012. – 24 с.

24. Янгиев □. Исбот□илишинститути // http://huquqburch.uz/uz/view/5549 (□у□у□ ва бурч журнали).