

ADVANCED EXPERIENCE OF FOREIGN COUNTRIES IN ENSURING THE ADMISSIBILITY OF EVIDENCE AND ISSUES OF ITS IMPLEMENTATION IN NATIONAL LEGISLATION

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Abstract. This article analyzes the advanced experience of foreign experts in ensuring the admissibility of evidence and the issues of its implementation in national legislation. The norms of the Criminal Procedure Code of the Republic of Uzbekistan on the admissibility of evidence are studied from a comparative legal point of view. Based on the results of the analysis and research, the author's substantiated proposals and recommendations are elaborated.

Keywords: crime, evidence, admissibility, evidence collection, examining evidence, evaluating evidence, proving.

Compliance with the conditions for ensuring the admissibility of evidence in criminal proceedings is a complex process, and when studying the issue of improving this process, it is important to carefully study the positive experience of foreign countries in this regard and conduct a comparative legal analysis.

The “Concept for Improving the Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan” has already been adopted, approved by the Resolution of the President of the Republic of Uzbekistan No. 3723 of May 14, 2018 “On measures to fundamentally improve the system of criminal and criminal procedural legislation”, Criminal Procedure Legislation as one of the completely new priorities of the state criminal law policy in paragraph 1.4 of Section II Defines the task of **“further improving the system of criminal procedure principles taking into account modern approaches, advanced international standards and foreign practice”**.

However, in Section II of this Concept, entitled **“expected results from its implementation, the introduction of advanced Foreign Experience into criminal and criminal procedure legislation taking into account national peculiarities and conditions”**,¹ it is necessary to consider the prospects for introducing positive experience into national legislation.

Thinking about introducing advanced foreign experience into criminal and criminal procedure legislation requires, first of all, a thorough analysis of this positive experience based on a number of criteria.

It is worth noting that the unique experience of foreign countries in ensuring the admissibility of evidence has been improving over many years as a result of socio-political and other factors existing in them, and in this regard, one can see a variety of legal

¹ Ўзбекистон Республикаси Президентининг 2018 йил 14 майдаги “Жиноят ва жиноят-процессуал қонунчилиги тизимини тубдан такомиллаштириш чора-тадбирлари тўғрисида”ги ПҚ-3723-сон қарори // <http://lex.uz>.

requirements and conditions for the admissibility of evidence, that is, simplified or, conversely, more complex forms.

In our opinion, it would be appropriate to systematize these conditions based on the provisions of the criminal procedure legislation of our country, and such a selection will further improve the quality and effectiveness of the analysis.

Moreover, part three of Article 95 of the Criminal Procedure Code of the Republic of Uzbekistan provides that evidence will be considered admissible only if it is collected in the prescribed manner and meets the conditions stipulated in Articles 88, 90, 92-94 of this Code.

An analysis of the rules defined in the above-mentioned Articles 88, 90, 92-95 allows us to classify the conditions determining the admissibility of evidence as follows:

- 1) *collection of evidence in the manner prescribed by law;*
- 2) *the obligation to protect the rights and legitimate interests of citizens, enterprises, institutions and organizations in the process of proving (Article 88 of the Criminal Procedure Code);*
- 3) *the obligation to record evidence in the protocol of the investigative action or court hearing (Article 90 of the Criminal Procedure Code);*
- 4) *mandatory verification of evidence (Article 94 of the Criminal Procedure Code).*

Now we will analyze these classifications in a comparative legal aspect with the conditions established in the criminal procedure legislation of foreign countries, and we will try to show the positive achievements and shortcomings of these countries.

1. Collection of evidence in accordance with the law.

According to the first part of Article 87 of the Criminal Procedure Code of the Republic of Uzbekistan “**Examination of evidence and judicial actions:** interrogation of a suspect, accused, defendant, witness, victim, expert; femalization; show for recognition; checking the show at the scene of the incident; takeaway food; search; review; testimony; exhumation of a corpse; conduct an experiment; taking samples for expert examination; appointment of inspection and verification; acceptance of provided materials and documents; it is collected by listening to conversations carried out through telephones and other telecommunication devices, receiving information transmitted through them, as well as **conducting operational-search activities**”².

Therefore, according to the legislation of our country, in order for evidence to be admissible, it must be collected only through investigative and judicial actions, as well as through operational-search activities. Failure to comply with this condition may be considered a violation of the law, and the evidence collected may be considered inadmissible based on the results of its assessment.

This does not allow the use of evidence collected in future proceedings, and it is also possible to create liability for the subjects of proof in future proceedings.

In this regard, in the criminal procedure legislation of a number of foreign countries, slightly different aspects of the mandatory conditions related to the admissibility of evidence and its collection are noticeable.

² Ўзбекистон Республикасининг Жиноят-процессуал кодекси // <http://lex.uz>.

In particular, in the Republic of **Armenia** (Article 125³ of the Criminal Procedure Code), **Belarus** (Article 103⁴ of the Criminal Procedure Code), **Turkmenistan** (Article 133⁵ of the Criminal Procedure Code) **evidence is defined as collected only through investigative and judicial actions, and the legislation of the Russian Federation In this state, rapid search measures are provided as a means of collecting evidence that has not been caught.**

That is, according to the legislation of these countries, information collected as a result of operational-search activities is not only admissible evidence, but also cannot have the status of evidence.

The analysis shows that in these countries the list of means of collecting evidence is shorter than that specified in our national legislation, and the issues of ensuring their admissibility when collecting evidence have also become a more complex process.

It is worth noting that the criminal procedure legislation of the Republic of **Estonia** (Articles 64, 110-112 of the Criminal Procedure Code)⁶ and **Azerbaijan** (Article 143 of the Criminal Procedure Code)⁷ have similar or closer to our national legislation procedures for collecting evidence.

That is, it can be noted that in the legislation of these countries, as well as **investigative and judicial actions, operational-search activities (measures) are defined as a means of proof.**

However, we considered it necessary to note that the provisions set out in the Criminal Procedure Law of the Republic of **Ukraine** (Article 93 of the Criminal Procedure Code)⁸ deserve attention.

Because in the criminal procedure legislation of this country, in addition to the fact that evidence can be collected by the subject conducting the criminal case, as well as by conducting investigative and judicial actions, the victim and the representative of the legal entity are also granted the right to collect evidence in a criminal case.

According to this analysis, it can be said that in the criminal procedure legislation of the Republic of Ukraine, the possibilities of the prosecution and defense in the process of proof are almost equal. Because the defense can also collect evidence that refutes, questions or confirms the evidence it collected in parallel with the prosecution. The evidence collected by the defense is also examined, assessed, and the evidence found to be admissible is used in the process of proving along with the evidence collected by the prosecution.

It should be noted here that, in our opinion, there are some gaps in the process of collecting evidence in the countries whose criminal procedure legislation we analyzed above.

Because, in our opinion, it is inappropriate to limit the means of proof that make up the process of collecting evidence to a specific list of certain actions, i.e. investigation, judicial actions, operational-search activities.

³ Уголовно-процессуальный кодекс Республики Армения // <http://base.spinform.ru>.

⁴ Уголовно-процессуальный кодекс Республики Беларусь // <http://base.spinform.ru>.

⁵ Уголовно-процессуальный кодекс Туркменистана // <http://base.spinform.ru>.

⁶ Уголовно-процессуальный кодекс Эстонии // <https://www.legislationline.org/documents/section/criminal-codes>.

⁷ Уголовно-процессуальный кодекс Азербайджанской Республики // <http://base.spinform.ru>.

⁸ Уголовный процессуальный кодекс Украины // <http://base.spinform.ru>.

In this regard, we support the established procedure for collecting evidence in the criminal procedure legislation of the Republic of **Moldova** (Article 100 of the Criminal Procedure Code)⁹, **Kazakhstan** (Article 122 of the Criminal Procedure Code)¹⁰, **Kyrgyzstan** (Article 93 of the Criminal Procedure Code)¹¹.

Because the criminal procedure legislation of **these countries** does not specify a precise list of evidence that constitutes the process of collecting evidence, but is regulated by the rule that evidence can be **“collected by carrying out procedural actions provided for by this Code”**.

In our opinion, this norm is devoid of loopholes and loopholes and serves to prevent problems in the further assessment of the admissibility of evidence collected in a criminal case.

Because the concept of “procedural action” can include all actions defined in the criminal procedure law, and is a very broad concept in relation to the investigation, judicial actions and operational-search measures.

As S.B. Khodzhakulov rightly noted: **Procedural action** is ensured by the norms of the criminal procedure law, pre-trial investigation – by the investigator, investigator, prosecutor, court (judge), and defense – by the investigator, investigator, prosecutor, court (judge) and defense. lawyer, as well as preliminary ones, which are carried out during the investigation and trial, have evidentiary value or supporting recommendations corresponding to the procedural nature, and are also reflected in additional documents. this action.¹²

In our opinion, in order to ensure the proper functioning of the conditions for collecting evidence in accordance with the law and to eliminate misunderstandings and gaps in regulatory documents, the criminal law of the Republic of **Moldova** (Article 100 of the Criminal Procedure Code), **Kazakhstan** (Article 122 of the Criminal Procedure Code), **Kyrgyzstan** (Article 93 of the Criminal Procedure Code) is applied in our national legislation. We consider it appropriate to apply this positive experience related to the collection of evidence in procedural legislation.

For this purpose, we consider it appropriate to set out part one of Article 87 of the Criminal Procedure Code of the Republic of Uzbekistan in the following new version:

“Article 87. Collect evidence.

Evidence is collected through investigative and judicial actions, conducting operational-search activities, as well as conducting other procedural actions provided for by this Code.”

In our opinion, the description of part one of Article 87 of the Criminal Procedure Code of the Republic of Uzbekistan in this version corresponds to the decision of the Republic of Uzbekistan dated April 4, 2018 “Amendments and additions to certain legislative acts, documents of the Republic of Uzbekistan in connection with the adoption of measures to strengthen guarantees of the rights and freedoms of citizens in judicial and investigative

⁹ Уголовно-процессуальный кодекс Республики Молдова // <http://base.spinform.ru>.

¹⁰ Уголовно-процессуальный кодекс Республики Казахстан // <http://base.spinform.ru>.

¹¹ Уголовно-процессуальный кодекс Кыргызской Республики // <http://base.spinform.ru>.

¹² Хўжақулов С.Б. Процессуал ҳаракатлар: тушунчаси, таснифланиши ва тизимлаштирилиши: Ўқув қўлланма / –Т.: Ўзбекистон Республикаси ИИВ Академияси, 2013. – Б. 17.

activities”, we believe that this also serves the full functioning of the right granted to the defender to collect Evidence under the Law on “Implementation”¹³.

Here it should be said that, as E.Kh. Norbotaev and S.B. Khodjakulov rightly note: “at the same time, from the point of view of the legislator, on the one hand, the right of the defender is expanded, the right of prosecution and defense is equalized, and on the other hand, although the powers granted to the defender are a number of laws - although determined by documents, but the mechanism for their implementation, i.e. the actions of the defender are processed, the fact that it is preserved is ignored, requires awareness that the norms related to the right to defense acquire a declarative tone”¹⁴.

However, to be more precise, “not a single norm of the Criminal Procedure Code grants the defense attorney the authority to conduct investigative and judicial actions, as well as to conduct operational-search activities. Although the issue of collecting evidence in a criminal case by the defense attorney is reflected in the code, an obstacle to this is the procedural rule established in Part One of Article 87 of the Criminal Procedure Code on the procedure for collecting evidence”¹⁵.

These opinions once again confirm the appropriateness of presenting Part One of Article 87 of the Criminal Procedure Code of the Republic of Uzbekistan in the new version proposed above.

2. The obligation to protect the rights and legitimate interests of citizens, enterprises, institutions and organizations in the process of proving (Article 88 of the Criminal Procedure Code).

According to our national legislation, the objectives of the criminal procedure law are the rapid and complete disclosure of crimes, ensuring fair punishment for each person who committed a crime, exposing the perpetrators and ensuring the correct execution of the law **that no innocent person will be held accountable and convicted**, that the procedure defined in the criminal procedure legislation should contribute to strengthening the rule of law, preventing crimes and protecting the interests of the individual, the state and society.

Along with the full implementation of these tasks, the legislator has imposed on persons authorized to do so in the process of proof the duty to protect the rights and legitimate interests of **citizens, enterprises, institutions and organizations**.

Article 88 of the CPC provides for such mandatory rules, and any deviation from these rules will result in the collection of evidence being considered inadmissible.

In the process of proof in the criminal procedure legislation of foreign countries, when studying the rules governing the protection of the rights and legitimate interests of citizens, enterprises, institutions and organizations, in addition to the fact that they see that different

¹³ Ўзбекистон Республикасининг 2018 йил 4 апрелдаги “Суд-тергов фаолиятида фуқароларнинг ҳуқуқ ва эркинликлари кафолатларини кучайтириш бўйича чора-тадбирлар қабул қилинганлиги муносабати билан Ўзбекистон Республикасининг айрим қонун ҳужжатларига ўзгартиш ва қўшимчалар киритиш тўғрисида”ги қонуни // <https://lex.uz/docs/3609511>.

¹⁴ *Норбўтаев Э.Х., Хўжақулов С.Б.* Ҳимоячи томонидан қонунда назарда тутилган процессуал ҳаракатларни амалга ошириш механизми тўғрисида // Ўзбекистон Республикаси Ички ишлар вазирлиги Академиясининг ахборотномаси. – Т., 2010. – №2. – Б. 41.

¹⁵ *Ражабов Б.А.* Ишни судга қадар юритишда исбот қилишнинг умумий шартларига риоя этилишини таъминлаш: Юридик фанлар бўйича докторлик (DSc) диссертацияси. – Т., 2019. – Б. 98.

rules have been established in this regard, the issue of admissibility of evidence is regulated not in different articles of the law, but in one specific article.

In our opinion, this procedure will facilitate the issue of admissibility of evidence for law enforcement officers and reduce difficulties during the trial.

In particular, the first subparagraph of Article 88 of Part One of the Criminal Procedure Code of the Republic of Uzbekistan prohibits *“committing actions that are dangerous to the life and health of persons or degrading their honor and dignity”*, the second subparagraph *“coercion, intimidation, fraudulent and other illegal means to show, explain, obtain conclusions, perform experimental actions, prepare documents or objects and conditions of the prohibition “to achieve a position”*:

Article 105 of the Criminal Procedure Code of the Republic of Armenia **“Materials recognized as inadmissible as evidence”**¹⁶;

Article 105 of the Criminal Procedure Code of the Republic of Belarus **“Evaluation of evidence”**¹⁷;

Article 87 of the Criminal Procedure Code of Ukraine **“Inadmissible evidence obtained as a result of gross violations of human rights and freedoms”**¹⁸;

Article 94 of the Criminal Procedure Code of the Republic of Moldova **“Information inadmissible as evidence”**¹⁹;

Article 75 of the Criminal Procedure Code of the Russian Federation **“Inadmissible evidence”**²⁰;

Article 88(1) of the Criminal Procedure Code of the Republic of Tajikistan **“Inadmissible Evidence”**²¹;

Article 64 of the Criminal Procedure Code of the Republic of Estonia **“General Conditions for Collection of Evidence”**²²;

Article 125 of the Criminal Procedure Code of the Republic of Azerbaijan **“Admissibility of Evidence”**²³;

It can be noted that it is defined in Article 319²⁴ of the Criminal Procedure Law of Japan, Section IV, entitled **“Evidence”**.

In our opinion, a positive experience can be considered the fact that the conditions for the admissibility of evidence in the criminal procedure legislation of the named countries are defined in a single rule or separate rules on admissibility.

¹⁶ Уголовно-процессуальный кодекс Республики Армения // <http://www.parliament.am>.

¹⁷ Уголовно-процессуальный кодекс Республики Беларусь // <https://etalonline.by/document/?regnum= hk9900295>.

¹⁸ Уголовный процессуальный кодекс Украины // https://continent-online.com/Document/?doc_id=31197178#pos=1113;-61.

¹⁹ Уголовно-процессуальный кодекс Республики Молдова // https://continent-online.com/Document/?doc_id=30397729#pos=117.

²⁰ Уголовно-процессуальный кодекс Российской Федерации // <https://rulaws.ru/upk-rf/>.

²¹ Уголовно-процессуальный кодекс Республики Таджикистан // https://continent-online.com/Document/?doc_id=30594304.

²² Уголовно-процессуальный кодекс Эстонии // <https://www.juristaitab.ee/ru/ugolovno-processualnyy-kodeks>.

²³ Уголовно-процессуальный кодекс Азербайджанской Республики // https://continent-online.com/Document/?doc_id=30420280#pos=6;-144.

²⁴ Уголовно-процессуальный закон Японии // <https://wipolex.wipo.int/ru/text/187786>.

Since the correct ordering and systematization of legal norms creates the basis for eliminating misunderstandings or some difficulties in its application, as well as simplifying a number of complexities (procedures and conditions) associated with ensuring the acceptance of evidence for consideration. subjects of proof.

Therefore, in our opinion, it is advisable to coordinate the procedure and conditions of Articles 95-1 and 88 of our national legislation, given that they are placed in the same chapter.

3. The obligation to record evidence in the protocol of the investigative action or court hearing (Article 90 of the Criminal Procedure Code).

According to the requirements of the first part of Article 90 of the Criminal Procedure Code of the Republic of Uzbekistan, "Information and things may be used as evidence only after they have been recorded in the protocol of the investigative action or the protocol of the court hearing."²⁵.

Although the legislator did not specify the use of evidence as an element of proof in Article 85 of the Code of Criminal Procedure, he defined two conditions that affect the admissibility of evidence in proceedings on this issue.

That is, in order for the subjects of proof to be able to use information and things as evidence, they are required to make appropriate entries during the investigative process or in the protocol kept in the court session.

According to the requirements of Part one of Article 90 of the Criminal Procedure Code, this protocol must be drawn up by the investigator or the investigator at the stage of inquiry and preliminary investigation of a criminal case, and in court – by the presiding judge or the secretary of the court session. court session (assistant judge)²⁶.

It is worth noting that the requirements that information and things can be used as evidence only after they are recorded in the investigation protocol or the protocol of the court session are present in the foreign countries that we studied in the framework of the study (Armenia, Belarus). (Germany, Georgia, Turkey, Turkmenistan, Ukraine, Kyrgyzstan, Kazakhstan, Moldova, Russia, Tajikistan, Estonia, Azerbaijan, Japan, etc.) were not observed in the criminal procedure legislation. This allows us to conclude that these requirements, defined in our national legislation, can be assessed as a positive experience in this matter.

4. Mandatory examination of evidence (Article 94 of the Criminal Procedure Code).

According to the requirements of Article 94 of the Criminal Procedure Code of the Republic of Uzbekistan, "the decision taken on the case must be based only on carefully, completely, comprehensively and objectively verified evidence." The investigation consists of collecting additional evidence that can confirm or refute the evidence being examined.²⁷

However, an analysis of the rules related to the examination of evidence in the criminal procedure legislation of foreign countries shows that there are a number of best practices in this regard.

²⁵ Ўзбекистон Республикасининг Жиноят-процессуал кодекси // <http://lex.uz>.

²⁶ Ўзбекистон Республикасининг 2018 йил 29 январдаги "Ўзбекистон Республикасининг айрим қонун ҳужжатларига ўзгартиш ва қўшимчалар киритиш, шунингдек айрим қонун ҳужжатларини ўз кучини йўқотган деб топиш тўғрисида"ги ЎРҚ-463-сон қонуни // <http://lex.uz>.

²⁷ Ўзбекистон Республикасининг Жиноят-процессуал кодекси // <http://lex.uz>.

Including **Russia** (Article 87 of the Criminal Procedure Code), **Belarus** (Article 104 of the Criminal Procedure Code), **Armenia** (Article 126 of the Criminal Procedure Code), **Turkmenistan** (Article 135 of the Criminal Procedure Code), **Kazakhstan** (Article 124 of the Criminal Procedure Code) and **Kyrgyzstan** (Article 94 of the Criminal Procedure Code), **Moldova** (Article 100 of the Criminal Procedure Code), verification of evidence is not only related to the act of collecting new evidence, but also the act of verification is the analysis of evidence. This also included the actions of compiling, comparing with other evidence, checking the source from which the evidence was collected.

This analysis justifies the need to improve these norms in our national legislation.

Therefore, in our opinion, in order to apply the positive experience of the norms related to the examination of evidence in the national legislation, it is advisable to set out Article 94 of the Criminal Procedure Code in the following wording in the criminal procedure legislation of Russia, Belarus, Armenia, Turkmenistan, Kazakhstan, Kyrgyzstan, and Moldova:

“Article 94. Check the evidence

The decision on the case should be based only on evidence that has been carefully, completely, comprehensively, and objectively examined. The investigation consists of collecting new evidence, analyzing it, comparing it with other evidence in the criminal case, and checking the source of evidence that can confirm, question, or refute the evidence being examined.”

We believe that the description of Article 94 of the Criminal Procedure Code of the Republic of Uzbekistan in this wording will serve to eliminate the gaps related to the examination of evidence in the future.

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