

ISSUES RELATED TO ENSURING COMPLIANCE WITH THE GENERAL CONDITIONS FOR PROOF OF CRIMINAL PROCEDURE

Tadjiyev Anvar Aminovich

Chief Expert of the Chief Expert Forensic Center of the
Ministry of Internal Affairs of the Republic of Uzbekistan

ABSTRACT: In the article the author comments and analyzes the procedural rules that serve as a mechanism for ensuring compliance with the general conditions of proof in the criminal procedure of the Republic of Uzbekistan. According to the analysis and research, today the problems of the mechanism of ensuring compliance with the general conditions of evidence in the forensic practice of the republic are indicated, and the problems associated with the solution of these problems, as well as the observance of the general conditions of proving. Proposals and recommendations were developed to improve the mine clearance mechanism

KEYWORDS: General Conditions of Proof in Criminal Proceedings, Evidence, Prosecutor, General Conditions of Judge, Evidence, Investigator, Court, Judge.

INTRODUCTION

In criminal proceedings, the general conditions of proof are considered one of the most important and central institutions. Failure to comply with the general conditions for evidence may lead to the prompt and incomplete disclosure of crimes, not to impose a fair punishment to the person who committed the crime, to prosecute or sentence an innocent person or to not identify the perpetrators. In this regard, it is very important in the criminal process to ensure compliance with the general conditions of proof.

The presence of discrepancies between amendments and additions recently made to the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter - the CPC) with provisions on the mechanism of evidence, which includes the stages of collecting, checking and evaluating evidence, reinforces the need to improve this mechanism.

In particular, one of the problems of the mechanism for ensuring compliance with the general conditions of proof in the norms of the CPC that determine the general conditions of proof is the non-inclusion in the list that determines the implementation of evidence by the interrogating officer, investigator, prosecutor, court (article 86 of the CPC) of certain entities. To a number of these entities, you can also add the official of the body conducting the preliminary investigation, and the defense counsel. [1, p. 7], [2, p. 9], [3, p. 9-10]. At the same time, the presence of certain restrictions on the activities of entities involved in proving, and not reflecting these restrictions in the rules regarding the

general conditions of proof, is another of the shortcomings in the legislation.

If you look at the stages of the criminal process, you can see that the evidence at the stage of the pre-investigation check is carried out by an official of the body conducting the pre-investigation check, and the proof in the process of the pre-investigation check or investigation of the crime and the consideration of the case by the court is carried out by the inquiry officer, investigator and prosecutor.

In our opinion, it is advisable to limit the powers of these entities related to proof in terms of the stages of production and the exercise of procedural functions. In particular, from the point of view of the distribution of criminal procedural functions, it is determined that the investigator and investigator and prosecutor will carry out investigative and prosecution functions. However, it can be observed that the transfer, according to the current Code of Criminal Procedure, to the inquiry officer, investigator and prosecutor also of certain powers related to the resolution of the criminal case on the merits leads to actions that contradict the general conditions of proof in the process of resolving the criminal case on the merits.

Similarly, taking into account the need for the court to carry out only the functions of resolving a criminal case on the merits when considering the case, today we can observe how the court, according to the norms of the current Code of Criminal Procedure, is also sometimes forced to carry out investigative and indictment functions or performs such actions [4] , [5].

This mechanism is considered one of the obstacles to ensuring compliance with the general conditions of evidence. Because as a result of judicial investigative activities, decisive decisions can be made that serve the accusatory interests or express circumstances similar to it. Since the main goal of the result of criminal procedure is the administration of justice, the above circumstances make it difficult to achieve this goal. Therefore, when it comes to improving the mechanism for ensuring compliance with the general conditions of proof, there is a need to limit the powers of the proving entities from the point of view of the implementation of criminal procedure functions.

Gathering evidence as a general condition of evidence in content means collecting evidence by conducting investigative actions. Unfortunately, the effective work of this mechanism is hindered by certain norms of the CPC. For example, despite the fact that according to the requirements of the first part of Article 87 of the Code of Criminal Procedure, the possibility of collecting evidence by carrying out investigative actions has been determined, however, the law prohibits the production of all the investigative actions specified in the Code of Criminal Procedure during the preliminary investigation (Article 329 of the Code of Criminal Procedure). This circumstance gives rise to certain difficulties in ensuring compliance with the general conditions of proof in judicial investigative practice. In particular, if it becomes necessary to carry out a number of investigative actions before initiating a criminal case, the officials carrying out the evidence are forced to not comply or circumvent the rules related to the general conditions for collecting evidence.

In addition, despite the fact that the Code of Criminal Procedure reflects the possibility of collecting evidence by conducting operational investigative measures, it is not determined in what order the results of operational investigative measures will be used as evidence, and provisions on their mechanisms are not defined. In this regard, due to gaps in the law today it is not possible to specifically talk about a mechanism for ensuring compliance with the general conditions of evidence when collecting evidence. Meanwhile, today's analysis of the norms of the Code of Criminal Procedure does

not allow reflection on this topic.

It should be noted separately that today, for the full and high-quality collection of information of relevance to the criminal case, the interrogator, investigator cannot adequately establish psychological contact with the participants in the criminal process, they lack the skills to choose tactics and apply them in this area. As a result, the information (evidence) relevant to the criminal case is not completely collected, there are problems associated with the lack of evidence [6], [7], [8], [9], [10] or this leads to the direction of the materials of the investigative checks in the relevant courts for administrative or civil proceedings, and criminal cases are qualified by the article providing for easier sanction in the Criminal Code for the committed act.

Article 88 of the Code of Criminal Procedure defines the prohibition of a series of actions in the process of proof. However, there are no provisions on what checks can be carried out in cases of violation or non-compliance with these prohibitions, violations of this law when collecting evidence, and how to conduct these actions in the future. In this regard, recognizing the presence of many problems in situations of gathering evidence related to violation of prohibitions in the process of proving difficulties in finding solutions to these problems, it should be noted that, unfortunately, there are cases of consideration by responsible authorized persons, in particular, criminal courts cases and sentencing, turning a blind eye to these violations. Based on the content of the tasks of assisting in the prevention of crimes, protecting the interests of the individual, the state and society, it should be noted that collecting evidence and proving the guilt of the person who committed the crime with committing prohibited actions in proving is completely contrary to the goals of ensuring justice and is an absolutely unacceptable circumstance. Therefore, when revealing the commission of prohibited actions in proving, one of the most important tasks is a clear definition in the law, what should be the legal solution to the problem, what mechanisms can provide these requirements.

Recording evidence in the protocol is another important general condition of proof. However, compliance with this condition or ensuring compliance calls into question certain circumstances that arise in the investigation of a criminal case. Despite the fact that the Criminal Procedure Code does not have serious problems in recording evidence in the protocol or using additional methods in recording evidence, it is appropriate to admit that these provisions are outdated from the point of view of the development of science and technology today. The progress of science and technology, the rapid development of communications, the implementation of the reflection of information in electronic digital form, the expansion of the possibilities for using this information, as well as the need to create opportunities to use information as evidence in this form are also important from the point of view of achieving efficiency. In this regard, it is advisable to reflect in current legislation not only the recording of evidence in the protocol, photo or video filming in the procedural order, but also the recording of evidence using electronic digital technical means, as well as provisions that legitimize the possibility of their use in a criminal case in the future [11, p. 32-38], [12, p. 13], [13, p. 11-12], [14, p. nine]. For example, ensuring the registration of protocols in electronic form will serve to ensure compliance with the general conditions of evidence in this area.

Another problem related to the observance of the general conditions of proof is the inaccurate reflection in the CPC of how evidence should be verified. In particular, the legislative norm determines that verification of evidence consists only in collecting additional evidence, and this norm in content

does not fully reflect the process of verification of evidence. Because if you take into account that the verification of evidence after collecting additional evidence is carried out by comparing it with previously collected evidence, it becomes obvious the need for direct reflection in the CPC of norms relating to the implementation of this particular comparison.

In addition, non-compliance with requirements related to the protection of the rights and legitimate interests of a person during operational-search measures during the pre-investigation check is one of the following serious problems. In particular, when collecting evidence, including conducting operational investigative measures, one can often find cases of actions dangerous to the life and health of persons or degrading their honor and dignity [15], [16], [17], [18], [19]. At the same time, persons carrying out evidence in the process of proof try to obtain evidence or information that can be used as evidence or carry out other forms of evidence by violence, threats, deceit and other illegal measures.

Unfortunately, attempts to gather evidence based on these approaches can be justified by the lack of improved mechanisms related to ensuring compliance with the general conditions of proof. In our opinion, in order to protect the rights and legitimate interests of individuals in the process of proving, just one fixing in the CPC prohibiting actions is not enough. It is also advisable to fix in the CPC specific measures to protect these rights and interests, and mechanisms to ensure transparency of the evidence process.

The above problems associated with ensuring compliance with the general conditions of proof, in themselves, have a serious impact on the effectiveness of criminal procedure. Failure to achieve effectiveness adequately calls into question the development of activities, including the achievement of the intended goals of criminal proceedings, litigation. The effectiveness of the fight against crime may not meet the requirements in the field of state policy in the fight against crime. As a result, an increase in the number of crimes, avoiding the responsibility of the perpetrators of the crime will lead to a decrease in the trust of victims of crime to the law enforcement authorities, the court, and the level of compliance with the rule of law and the rule of law may also decrease. The mechanism of criminal proceedings, including the complexity of the order of proof, criminal procedure requirements relating to the process of proof is directed against the effectiveness of the activity. In ensuring compliance with the general conditions of proof, it is important to strive to simplify and ease this mechanism.

The complexities of the mechanism of criminal proceedings, artificial barriers and some inconsistencies in the law are barriers to the timely and full implementation of the tasks of the criminal procedure law, and also give rise to controversial situations. In this regard, to ensure compliance with the general conditions of proof, it is necessary to pay the main attention to the simplification of these complex orders.

References:

1. Milova I.E. Participation of a defense lawyer in collecting evidence during the preliminary investigation: Abstract of a dissertation for the degree of candidate of legal sciences. - Samara, 1998. - 17 p.
2. Vorobieva Yu.Yu. Modern problems of the process of proof in Russian criminal proceedings: Abstract of the dissertation for the degree of candidate of legal sciences: - Orenburg, 2006. – 22 p.

3. Levchenko O.V. Criminal procedural proof: Essence, means of proof, subject and limits: Abstract of the dissertation for the degree of Doctor of Law. - Izhevsk, 2001. - 51 p.
4. Materials of the criminal case No. 1-177/18 from the archives of Zangiota District Court.
5. Materials of the criminal case No. 24-1 / 110-18 in the archives of the Tashkent regional court
6. Materials of the criminal case No. 24-5 / 121-18 in the archives of the Tashkent regional court.
7. Materials of the criminal case No. 24-06-2018 in the archives of the Surkhandarya regional court.
8. Materials of the criminal case No. 1-78 / 2017 in the archives of Boz district court.
9. Materials of the criminal case No. 1-388 / 2017 in the archives of the Fergana district court.
10. Ximmatov I.I. Electronic criminal case information system // Investigative practice. Journal of the Investigation Department under the Ministry of Internal Affairs of the Republic of Uzbekistan. - T., - 2019. - №1. - B. 32-38.
11. Bostanov R.A. The use of derivative evidence in criminal proceedings in Russia: dissertation abstract for the degree of candidate of legal sciences. - N. Novgorod, 2012. - 31 p.
12. Okonenko R.I. "Electronic evidence" and the problems of ensuring the rights of citizens to protect the secrets of personal life in criminal proceedings: a comparative analysis of the legislation of the United States of America and the Russian Federation: dissertation abstract for the degree of candidate of legal sciences. - M., 2016. - 24 p.
13. Ovsyannikov D.V. Copying of electronic information as a means of criminal procedural proof: dissertation abstract for the degree of candidate of legal sciences. - Yekaterinburg, 2015. - 22 p 15.
14. Materials of the criminal case No. 24-06-2018 in the archives of the Surkhandarya regional court.
15. Materials of the criminal case No. 156617 in the archives of the Takhtakor district court.
16. Materials of the criminal case No. 24-06-2018 in the archives of the Surkhandarya regional court.
17. Materials of the criminal case No. 1-11 / 18 in the archives of the Qibray district court.
18. Materials of the criminal case No. 1-2/18 in the archives of the Yukorichirchik district court.
19. Materials of the criminal case No. 1-81 in the archives of the Chust district court.
20. Materials of the criminal case No. 156617 in the archives of the Takhtakor district court.