Ismaylova S.R., PhD student at the Department of criminal process of juridical faculty of the BSU ♦

The inner conviction as a principle of the assessment of evidence

Abstract: Inner conviction is considered as a method, result of assessment of evidence and as principle of assessment of evidence.

The inner conviction is a psychological category and it presents a certain sense of mentality that characterizes assurance in acceptance of decisions on criminal case.

The inner conviction reflects a personal assessment of evidence by the specific subject of proofs.

One of the features of the inner conviction is reflection in it moral principles of the subject of proofs.

Keywords: inner conviction; assessment of evidence; principle; situation; category; subject of proofs; free assessment of evidence.

At the turn of the 20-21 centuries the animated discussions took place in the procedural literature, touching the definitions of the main principles of the proof in criminal proceedings. One of the main arguable questions was an issue on the principles of assessment of evidence.

At that period, actually all authors who studying the issues of proof in criminal proceedings, had been against the theory of a formal assessment of evidence. In the works of them it is consecutively and with arguments was asserted that only the inner conviction of a judge can be the real measurement of the evaluation of evidence (13, p. 99-102).

In addition, the scientists repeatedly emphasized that the assessment of evidence by a judge should be free but not random. They worked out a classification of the

♦ **Ismaylova S.R.,** PhD - student at the Department of criminal process of Juridical faculty of the BSU, a member of the IOLR (Azerbaijan). E-mail: sid_legalservices@yahoo.com

rules, execution of which would restrain a transformation of the inner conviction of a judge into arbitrary. An essence of these rules can be determined as follows: a) only the data that were provided to a court and examined in the court order should be the ground for the sentence; b) the sentence is considered to be justice only upon condition that it is based on all circumstances of a case, i.e. none of data left without discussion; c) all circumstances of a case are discussed only in their combination, i.e. in comparison with each other; d) each separate evidence should be assessed according to its core and nature, and also on proximity to its known fact that is subjected to proof on it connection with the latter (13, p. 161-163).

Currently, some authors are trying to argue the term on necessity to establishment by a court objective truth on criminal case, and consequently an assessment of evidence on inner conviction. As notes S.A. Pashin, "it should be asked not about the inner conviction of a judge, and his ability to sum up a case under norm of law or precedent" (6, p. 52-58).

It seems to the truth a point of view of the scientists who conclusively proved that reappearance of the theory of a formal assessment of evidence would come to the negative consequences. The formal evaluation of the evidence that is based not on inner conviction of a judge, and only on availability or absence of a certain sum of evidence, actually excludes a criterion of morality from criminal proceedings. In its turn this comes to the loss of belief of citizens in any justice of criminal proceeding in total (1, p. 28-30). It seems that in the present conditions, when a level of confidence of the citizens to the law enforcement bodies and a court is not high and it is an inadmissible the reappearance of the theory of a formal assessment of evidence.

Therefore, we support the fixing in article 145 of CPC a principle of freedom of evaluation of evidence, revealing the content of which, a lawmaker emphasizes that a judge, jurors, prosecutor, investigator inquirer assess evidence on his inner conviction (11, p. 158).

In article 145 of CPC a lawmaker states that an inquirer, investigator, prosecutor, judge and juror evaluate the evidence on his inner conviction, but he does not reveal the content of the term "inner conviction". In a specific literature an

interpretation of this term is also ambiguous, though for the last years is prevailed a point of view according to which, an inner conviction should be considered as a method of assessment of evidence and so it result (1, p. 223). In the earlier works the authors were considered “an inner conviction” not only as a method and result of evaluation of evidence, but also as a principle and criteria of one (12, p. 138).

As it known, under the method is understood a way of theoretical research or practical implementation of something (4, p. 300). In this sense, an inner conviction acts as an instrument of the assessment of evidence on criminal case, i.e., it performs as what has received in completion of any activity or work. In addition, it seems that when it is speaking about the proof at criminal process, an inner conviction always acts as the interim result. Formation of an inner conviction is not self-sufficient: it comes out as a basis for acceptance of decisions by those or other participants of investigation or court proceedings.

It is difficult to be agreed to what that an inner conviction is criterion of evaluation of evidence since how true notes N.P. Kuznetsov, a criteria of assessment is that at which are assessed evidence. They are assessed on the inner conviction that is not a criterion of the truth. A criterion of the truth is practice (1, p. 49).

A more complexity issue, whether the inner conviction is principle of assessment of evidence. From our point of view, consideration of the inner conviction as a principle of the assessment of evidence is correct, because how true was noted in the works, an inner conviction in itself has legal meaning, as well as a legal meaning has the substantiation of this conviction, expressed that or other subject of proving in appropriate procedural form (7, p. 11-12).

At the same time, it is necessary to emphasize that extremely important fundamental legal significance has a fixed in the law a provision, according to which an assessment of evidence carries out on inner conviction of the subjects of proving. It is presented that this provision has a strategically important significance as for the theory of proving so for criminal proceedings in whole, and it should be considered as principle of criminal process. As it is true noted in literature, an implementation of

the assessment of evidence on the inner conviction of a subject is the main rule and the same time a principle of criminal process (5, p. 81).

The literature is offered a few definitions of the inner conviction. There is an opinion that indication of the law on inner conviction needs to understand first of all, as exceptionality of a competence of person carrying out production of a case (10, p. 475). It is thought that this definition does not correct reflect a content of investigative category. Each official person – a participant of criminal process, acts in frame of his competence but this competence is not exceptional. About this is testified existing system of prosecutorial supervision and judicial control that built of a certain hierarchy. Besides, on our opinion, stated definition is divorced from the actual process of proving and it element as the assessment of evidence. In connection with this, more substantiated is a definition offered by A.P. Ratinov, who determines the inner conviction "as a search of the truth which is free from external coercion and not connected with formal instructions" (8, p. 167). In this case indication on freedom of a subject of proving from external coercion is important. At same tome the inner conviction is not a process: as stated above, this is either a method of establishment of the truth in criminal procedural proving or it result.

The inner conviction is psychological category. Without indication of this aspect the concept of inner conviction is become incomplete since it are existed and another methods of assessments of evidence. For instance, versions proposals, acceptance of procedural decisions on a case are such results. In psychological aspect the inner conviction of a subject of proving is presented itself a certain sense of cognition, characterizing assurance in acceptance of solutions on criminal case (3, p. 91).

First of all, the inner conviction reflects personal assessment of evidence by a specific subject of proving. From our point of view, it is not right in this case the authors who assert that the inner conviction of an investigator is a category of subjective and objective category (3, p.41). The inner conviction is called the inner because it is inherent to a specific subject of proving, it reflects his personal assessment and it is quite possible that may not coincide with conviction of other subjects of proving. In addition, objectivity that or other circumstance is established

at time of assessment activity a specific subject of proving, and to speak about subjective assessment of objective circumstances in this case is untimely.

One more feature of the inner conviction is a reflection in it the moral values of a subject of proving. As rightly notes T.M. Moskalkova, the inner conviction is the moral basis of an accepted decision, important moral and psychological guarantee it correctness and justice (3, p. 91). In the ethic plan a conviction is presented itself a rational basis of the moral activity of an individual that allows him to commit that or other action cognitively with rational understanding of necessity and expediency of certain behaviour.

From our point of view, it is presented an interest the characteristic of the inner conviction reflecting a modern view on this issues that was given by Y.K. Orlov. He determines two features of the assessment of evidence on the inner conviction: a) first feature of free assessment is that its subject is not connected to the law and absence of any formal instructions in it; b) a subject of assessment is not connected with opinion of other subjects, the ban on interference in assessment activity (5, p. 83).

On our opinion, this point of view is not quite adequate reflected a core of this category. Y.K. Orlov asserts that a sign of free assessment is absence to it a coherence with the law. At the same time, in substantiation of his thesis the author shows on legislative instruction, according to which none of evidences have establishing in advance force for a subject of proving. In this case a subject of proving is given quite clear instruction on inadmissibility of use a specific method of the assessment of evidence, i.e. one cannot speak about any disconnectedness of a subject of assessment with the law, “free evaluation”. We just not, that criminal procedural law contains some other orders relating to the assessment of evidences. For instance, article 145 of CPC contains an order about that the assessment of evidences carries out in complex.

Criminal procedural legislation of many European countries is fixed the provision according to which the assessment of evidences carries out on the inner conviction and in addition, it contains a number of restrictions of absolutely free assessment of evidences. Thus, in criminal procedural legislation of Belgium is

contained a number of the limitations of a free assessment of evidences: the first, a judge is connected with a certain police protocol, and the second, he cannot rely on inadmissible evidences (the rules on exception from the evidences) (9, p. 99-100).

Chapter 184 of the Law "On Administration of Justice" acting in Denmark, together with fixing of the assessment of evidences on the inner conviction contains unsubstantiated, from our point of view, mandatory for the subjects of proving in Denmark provisions. According to them two witnesses cannot be wrong; spouse of an accused cannot be heard in a court as witness; the evidences that are based on rumors are inadmissible (9, p. 101).

From stated provisions can be made the following conclusions: 1) thesis on disconnectedness of a subject of the assessment of evidences by the law, absence in it any formal orders relating to the assessment of evidences is not confirmed by the analysis of current legislation, including foreign one; 2) it is more correct in this case to speak not about free assessment of evidences on the inner conviction of a subject of proving.

As for the second sign, stated by Y.K. Orlov – disconnectedness of a subject of the assessment of evidences with opinion of other subjects is that it unconditionally is essential feature of the inner conviction of a subject of this assessment. How it emphasized above, the inner assessment reflects a personal assessment of a subject of proving. At the same time, an inclusion in substance of this sign of indication on the ban to interference in assessment activity is illegitimately. Such ban has an important significance for proving and unconditionally, is needed in further legislative regulation, but it is a term under which is formed the inner conviction that or other subject of proving.

It is presented that substance of this category is not only exhausted by indication on independent and personal assessment of evidences by a subject of proving. As it noted earlier, an equal value and may be more important significance has psychological component – assurance of a subject of proving in that assessed him evidences completely meet requirements (criterions) of relevance, permissibility, authenticity, sufficiency.

One more sign of the inner conviction was named by L.D. Kokorev who emphasized that the assessment of evidences by the various participants of process, including higher officials and bodies, has mandatory significance for the following assessment of evidences by the investigators, judges and other persons, carrying out a proving (1, p. 224).

Consequently, it can be resumed that the inner conviction is a free from opinion of other persons sustainable and morally substantiated psychical attitude of a subject of proving to the quality and quantity of necessary and sufficient elements constituting a substance of the concept of evidence, performing as a method and result of the assessment of evidences (proving information).

Bibliography

1. Kokorev L.D., Kuznetsov N.P. Criminal process: evidences and proving. Voronezh, 1995.
2. Korukhov Y.G., Zelinskaya O.B. Procedural category “inner conviction” from position of moral principles of investigative activity//Criminal process and criminalistics at the turn of the centuries. M., 2000, p.38-41.
3. Ethics of criminal procedural proving. M., 1996.
4. Ozhegov S.I., Shvedova N.Y. Explanatory Dictionary of Russian language. Forth Edition. M., 2000.
5. Orlov Y.K. Basics of the theory of evidences in criminal process. M., 2000.
6. Pashin S.A. The theory of formal evidences and common sense. // Rossiyskaya Yusticia. 1996, No. 1, p. 52-58.
7. Razumovsky S.K. Assessment of evidences in criminal process. Kazan, Ishig, 2007.
8. Ratinov A.P. Forensic psychology for investigators. M.: Yurlitinform, 2001.
9. Sologub P.I. Evidences: assessment, relevance, permissibility. Krasnoyarsk, Pobeda, 2006.

10. Theory of evidences in Soviet criminal process/Edited by N.V. Zhogin. M., 1973.
11. Criminal Procedural Code of Azerbaijan Republic. Baku: YuL, 2001.
12. Cheltsov M.A. Soviet criminal process. M., 1951.
13. Foynitssky I.Y. Course of criminal proceedings: V. 2 S. Petersburg, 1915.