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### **The notion of proof: correlation of the criminal-procedural and criminalistical aspects**

**Abstract:** It is considered the notion of proof, its structural elements, and their ties.

It is studied a correlation of criminal-procedural and criminalistical aspects of proving.

It is given suggestions to change and supplement the criminal-procedural legislation.

**Keywords:** proof; evidence; information; criminalistics; criminal process.

As it known, history of the most juridical sciences comes up to the first types of the states and law, springing up in result of decomposition of the primitive communal society.

The first serious violation of established by the state rules of behaviour (whether it was the law or customs) - the first crime, which was caused necessity of its investigation, establishing the personality of a criminal, proving of a guilt, circumstances, mechanism and reasons of committed deed.

Not considering possible to ignore the principle of historicism, being limited with parameters of the present article, which does not allow considering in details international experience of the problems decision proving, as a kind of starting point of studying, we take judicial reforms of Russia of 1864 as the turning point of transition from inquisitorial process to adversarial process.

It seems that inherent in reforming legislation the provisions and principles, and also ideas, which reproduced in fundamental works of the famous scientist that time – L.E. Vladimirov, V.D. Spasovich, I.Ya. Foyntitsky, N.N. Rozin, D.T. Talberg, V. Sluchevsky, A.F. Koni and others, influenced not only on development of the

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criminal proceedings and system of proving of pre-revolutionary Russia but also had been, in a certain extent, the basis of construction of the similar system in the Soviet Union, and also on the stage of modern history in Azerbaijan Republic.

It seems that before mentioned reform the criminal process in whole and the system of construction of proofs during fulfillment of the justice in Russia, and correspondingly in Azerbaijan, passed through the same stages and steps that their Western European types.

Thus, on the Court books of Ivan Third of 1497, the main methods of proving were search and torture. The Legal Code of 1649 of Tsar Alexei Mikhailovich fixed the search order, which finally ousted the rests of adversarial process. This order had been existed up to the juridical reform of the middle of nineteenth century. Repeated attempts to liberalize the process with way of repeal of the tortures and body punishments did not change a core of this process, which had remained close for all participants of the process.

In addition, it should note that in spite of above mention circumstance, the issues of proving gradually became dominant in the criminal process of Russia. So, the first criminal-procedural law of 1832 of Russian empire had named “On court proceeding on crimes”. According to the law, police was obliged a collection of the proofs, detection and exposure of the guilty, ordered to do investigation as soon as possible, fullness and clearness (33, p. 65).

According to the Judicial Statutes of 1864, the juridical power was separated from executive one. It was set up the estate free courts and introduced adversarial juridical process having exact procedural limitations of the functions of proving and their juridical resolution.

Article 260 of the Statue of Criminal court proceedings follows that a court investigator had timely to make measures, which were necessary to gather the proofs, and especially not to let any delaying in detection and saving such traces and signs of crime that could be lost (1, p. 9-10).

The gaps in lightning of the problems of proving and proofs, which had in the Statue, had been trying to fill the leading scientists that time, who wanted to build a coherent system of evidence basing on the present legislation.

In his classic work “The doctrine on criminal evidence”, L.E. Vladimirov determined the latter as “any fact having function to challenge in the court the convictions in existing or non-existing any circumstances, which had a subject of the juridical investigation” (10, p. 71-72). The author gave a definition of criminal-judicial reliability, outlined general terms of the proofs presenting, determined list of evidence etc. (10, p. 111-206).

Under other angle of view these issues was considered by V.D. Spasovich in his “Theory of juridical-criminal proofs” was the first who tried to research the problem through the prism of criminalistical science (31, p. 16-19).

In the soviet period, article 111 of the CPC of 1922 of RSFSR in new edition of 1923 demand on an investigator to clarify and investigate the proofs, as catching out so justifying of an accused person, and also all circumstances of the both aggravating and mitigating the extent and nature of his responsibility (1, p. 4-5).

The primacy of the issues proving were clearly expressed in the basics of Criminal Procedure of the USSR and union republics in 1958 and the Criminal Procedure Code of the Azerbaijan Soviet Socialist Republic in 1960. These documents determined the tasks of criminal court proceedings (art. 2): rapid and full disclosure of the crimes, identify the culprits and providing right application of the law that each individual who committed crime would be fair punished and none innocent would instituted to criminal responsibility and convicted (35, p. 5-6).

It should note that in soviet period, it is the first was developed procedural theory of proving, which, if speaking generally, a proving process came to the formal-logical investigation of the proofs. Later, awareness of exceptional importance of the proving processes came to gradual transformation of the theory of proving into procedural one, in which for detection, fixation, checking and evaluation of the proofs had bee also used, mainly, the logical operations.

Based on the goals of our studying, we will try to see how in this stage the issues of proving of crimes in criminalistics had researched. It should note in this connection that studying of the proving issues the closely linked with the problem of determination of the criminalistics subject, and therefore we consider the most important, with our point of view, definitions.

Thus, in 1940 B.M. Shaver determined of the criminalistics as the science on the techniques and methods of detection and investigation of the proofs, which were used for purposes of disclosure of crime, detection and identifying of a criminal (5, p. 16-19).

In 1950 A.I. Winberg, determining the subject of criminalistics, also spoke not only about studying of the ways of committing crime, and about technical and tactical techniques and the means of detection, collection, fixation and research of the juridical proofs (9, p. 19-20).

In the middle of 60<sup>th</sup> of the past century, R.S. Belkin and Yu.I. Krasnobayev came to conclusion that in the basis of a subject of criminalistics lies the group of studying by it objective regularities, and namely “objective regularity of appearance of the juridical proofs and objective regularity of their detection, investigation, evaluation and use” (2, p. 90-94).

Later, R.S. Belkin improved definition, stating that criminalistics studies not only the objective regularities of appearance, collection, investigation, evaluation and use the proofs, but also based on these objective regularities the means and methods of their juridical research and preventing of crimes (24, p. 14-15).

In 1966 it was published the work of R.S. Belkin “Collection, investigation and evaluation of the proofs”, which was dedicated to formation of the basis of criminalistical methodology of proving. In the work R.S. Belkin came to interpretation of collection, research and evaluation of the proofs from position of general theory of cognition: in exact compliance with one of the definitions of the methodology had applied the principles of formation of the world outlook to the process of cognition both in criminalistics and in practice of using achievements of this science (3, p. 11-69).

In 1969 R.S. Belkin and A.I. Winberg edited a monograph “Criminalistics and proving”, in which were shown the presence of indissoluble ties between the theory of proving and criminalistics, confirming that the theory of proving can not be substantially developed in isolation from the science of criminalistics. The authors theoretically substantiated necessity to differ a notion of the proofs from an activity on their collection, research, evaluation, i.e. from activity on proving. They proved that an activity on proving could not be carried out without application of special criminalistic methods (4, p. 111-160).

In a different way this issue was lightened by other scientists. So, I.F. Panteleyev saw a role of criminalistics in proving in determination of the objective regularities, characterizing the process of disclosure of the crimes (21, p. 7), N.A. Selivanov determined a role of criminalistics in establishing of the objective regularities in appearance, collection and use of the traces of crime (23, p. 6), V.Y. Koldin – in determination of the objective regularities of movement of criminal-relevant information upon committing and investigation of the crimes (25, p. 4), and V.A. Obraztsov – in studying of the natural particularities arising in result of information reflection (22, p. 24).

With our point of view, in spite of abundance of ideas, so far, there is not a clear (system) differentiation in correlation of criminalistics and criminal process in part of the proofs and proving. This problem became the reason of serious scientific discussions, aggravating in 1977 when A.I. Winberg advanced principle according to which the science of criminal process in part of collection and investigation of the proofs, knowledge of appropriate regularities (theory of proving) is a section of the science of criminalistics and consequently should be learned in frame of the latter (8, p. 75).

The issues that considered in such aspect in the most common form can be formulated the following: theory of proving or criminalistics; or theory of proving and criminalistics. The goal of research of informational regularities by the theory of proving is a registration of them and the results of their manifestation in emergence and development of the norms of proving law and its institutes and systems. On this

base the theory of proving researches the process of evidence as dynamic system of legal relations, regulating by the principles and norms of criminal-procedural law (8, p. 75-77).

But, procedural relations and procedural institutions do not cover of entire multifaceted and far not invariant activities on collecting, research, use and evaluation of the criminal-relevant information. By virtue of this, there was an idea among of the specialists that emergence of criminalistics, and its continuous and progressive development is caused by necessity of cognition of the means and methods, structure of informational-cognitive activity in this specific sphere, and first of all – regularities, which are lain in its base. Other words, criminalistics was seen by the science, studying them in other purposes than the theory of proving, and namely – in purposes of optimization of the means and methods of informational-cognitive activity during juridical investigation of the crimes (6, p. 126-129).

Indeed, the proving basically includes also cognitive and communicative and certifying activity as its integral structural components. As there is no proving without cognition, so there is no proving without fixation and certifying of the proofs and the process of their collection and investigation, i.e. without accompanying of the process of cognition of communicative and certifying activity.

Cognitive, communicative and certifying acts of the subject of proving form an organic unity and present itself qualitatively new activity – proving. Cognitive and certifying sides of the proving are not alternating, but interacting elements of the activity on collection of the proofs (7, p. 171-175).

The process of extraction of the knowledge as the basis of proving is a result of the processes of reflection since an event of crime reflecting in environment leaves the traces in it, which possess with information that caused this event, and they are rightly reflected in mind of investigating subject.

On the base of the ideas about that from epistemological point of view, any changes of environment happened in result of committing a crime in this environment are the traces of the crime, in procedural science became possible to concretize the structure of the cognitive processes (11, p. 61-62).

Under this, it should be taken into account that the traces are not yet the proofs, and in order to be such they should be perceived by the subject of proving, reflected in his mind, transformed by him and in such changed form are fixed in the materials of a case (12, p. 176-177). The result of special cognitive-communicative activity of the subject of proving is formed a content of a process of proving formation and is determined the direction of the process of proving from position that worked out by criminalistics. It should remember that criminal-procedural law regulates the forms of their application, but not the methods of cognition as the categories of epistemological. Therefore, in process of proving criminalistics is included system-forming, constructive role. All these are caused necessity to research not only internal construction of the investigative actions from the point of view efficiency of their performance, but also internal construction of the process of proving as the basis of procedural cognition (16, p. 76-79).

With our point of view, undoubtedly the classical provisions of the theory of criminalistical identification, theory of reflection and studying about fixation of proving information are the basis of criminalistical constituent of the proving theory. Herewith, knowing that research of the separate investigative actions in purpose of more efficient extraction necessity proving information is not enough the criminalists worked out the provisions of methods and tactics of investigation performance on the various categories of finding and fixation of criminalistically significance information (17, p. 17-19).

Research of proving is necessary and productive from the point of its studying as the process of collection, investigation, assessment and use of the proofs, and also appearing during of this regularities and interdependence, determination of the methods and tactics of activity of the proving subjects. It is carried out in traditional direction of criteria studying of this process offered by the procedural theory of proving.

But, it cannot create universal theory of proving, which would allow solving all problems in this very individual and specific activity, designing some universal

formula of its application, providing of practical workers with a key to disclosure of any crime.

In addition, research of the regularities of proving process is an urgent need of our day as from position, which have worked out by the criminal-procedural science, so in aspect of the last achievements of criminalistics as science studying a substantial side of proving activity.

Activity of a subject of proving on finding and research of actual data are related to the proving subject and clothe them in the appropriate procedural form is associated in the juridical science exclusively with criminal-procedural activity that in great extent is justly.

In criminalistics science a notion of “activity” is mainly identified with the notions “criminalistical means”, “criminalistical techniques”, “criminalistical investigation”, “criminalistical methods”, “criminalistical providing of proving process” etc. Herewith, technical-criminalistical providing of the researched process is considered as a system education, organizational-tactical on essence and legal on the form (15, p. 100-109).

Any activity is determined as goal-directed thinking and actions of a personality, which is caused by the social relations. The necessary components (object, goals, motives, means) give certain content each of its form. Activity of a specific man is unique, but as the activity of a group of people it has various aspects (26, p. 29-31).

Proving is related to one of the kinds of social activity. Application of the provisions of theory of activity during carrying out of proving has important significance as in its combination is allowed: a) to use system and structural analysis for determination all elements, stages, directions and structure of activity on proving, which are characterized the functions of the bodies and individuals included in a system of combat to criminal; b) to study the particularities of structural elements and subgroups of investigated activity with purpose of providing efficiency of their functioning, ordering , and also improving of interaction of all subjects of proving; c) to separate all constituent elements of activity – actions, their correlation – and to determine a role of each in proving (27, p. 110-112).



In addition, speaking about actions of the subject of proving, one cannot assert that producing any investigative action, he purposively divides his actions on procedural and criminalistical. Wherein, as we noted, criminalistical element of activity on the crimes proving, according to fixed point of view, is linked mainly only with necessity of maximal efficiency of performance of investigative actions or procedural fixation of identified information about the facts.

In connection with stated one cannot note that production that or those investigative with point of view of procedural form, methods and tactics of their performance in the most cases have fixed and unchangeable nature, really directed to maximal extraction necessity of evidentiary information.

One can assert that criminalistical activity in context of the stated is directed to establishing and researching material and ideal traces-reflections of crime, which are necessary to carry out procedural proving, and organically woven into the core of it. Simultaneously, criminalistical activity might be considered from two sides: as a form of realization of special criminalistical knowledge in the process of implementation of proving, and as a separate criminalistical method of cognition of the truth in the process of criminal court proceedings (30, p. 99-100).

It is clear, that there is no any especially criminalistical activity different from procedural and existing autonomously, therefore it is completely unfounded are seemed the attempts of some authors to distinguish artificially procedural activity from criminalistical one (17, p. 168-171). Herewith, the latter is seen as activity directed to establishing of the circumstances of investigated case and procedural one - on exposure of the individuals, guilty in committing of the crimes, and substantiation of the decisions, which are accepted on a case (17, p. 169-173). There is a criminalistical activity carrying out in the frames of procedural proving and directed to establishing and researching the traces-reflections of the committing criminal deed. It is carried out in compliance with the principles and methods, which have worked out by the criminalistics as the science studying crime and criminal activity on their traces-reflections in material environments, testimonies, documents. It seems that we should speak about that to establish a core of this activity, determine its special

principles, stages, algorithm performance in structure of procedural proving of the crimes, i.e. in the process of achievement of objective truth in the frames of criminal court proceedings – legal, founded and fair resolution of criminal case (28, p. 19-21).

Thus, one can affirm that the category of activity is the most important in a system of criminalistical knowledge since the main objects of the theoretical and practical research of criminalistics are the traces-reflections of the material structure of the system “crime”, establishing of which is possible only in result of activity of the subjects of proving, directed to extraction, investigation, checking, fixation and assessment of these traces with purpose of providing efficient procedural proving.

Since crime should be considered as a system formation then the activity on establishing of the traces-reflections of a crime is presented itself the system of actions of the subjects of proving on establishing and investigation its structural elements, links between structural elements and their functioning, and also development. With considering of that in cognitive situation is mandatory entered a subject of this activity with its goals, methods and means, then the result is a knowledge in kind of created algorithm of functioning of researched system, carrying out of which should lead to achievement of concrete aim – designing of the criminalistical models of activity on crime proving and criminal behavior of the perpetrators and realization them in the process of criminal-procedural proving.

From our point of view, cognition and proving are constituent elements of the one process and might be clear delimited purely conventional only. But, the subject of criminalistics might not be equated to the subject of criminal process in whole or to one of its stages. Criminalistical activity on proving is to a large extent an empirical component of the process, which on its volume a wider than procedural proving; as the subject of criminalistical cognition is a system of the reflections of crime and criminal behavior creating owing to a complex activity of the number subjects, which participate in the process of proving.

Thereby, one might ascertain that criminalistically on content a system cognitive-communicative activity of the subjects of proving of a fact of the crimes committing and criminal activity of a person, in essence, is the fundamental principle

of as the subject so and the process of criminalistical proving, which compile a basis of procedural proving. In turn, the complex activity on creating of the criminalistical model of proving supposes a creation of the complicated construction, constituent parts of which should be the results of a joint activity on establishing of combination elements of criminalistical structure of crime and criminal activity realized by all subjects of proving in all stages to combat crime.

In connection with stated it is presented necessity to research in details and concretize a role of criminalistical proving in total process of criminal-procedural cognition, its object, structure, content, stages and particularities.

Speaking on criminalistical content of the process of proving, it is necessary to determine first, what should be understood under the stages and content of this process from point of view procedural law.

An issue of the structure and content of the process of proving is a disputable in theoretic works and presents an undoubted interest for practice of law enforcement bodies (29, p. 71-72). Traditionally the process of proving is accepted to consider as collection, checking and evaluation of the proofs (12, p. 11-13).

Some authors subdivide the process of proving onto collection, fixation, checking and assessment of the proofs; detection, gathering, collection, fixation, checking and assessment of the proofs; putting forward the versions, collection, fixation, checking and assessment and substantiation of a conclusion etc. (17, p. 126-129).

In this connection we suppose that it is necessary to consider in brief those provisions of the classical theory of proving, which characterize this process from the point of view of the stages that stipulated in article 138 of the CPC of Azerbaijan Republic.

First of all, it should note that in criminalistical science is established certain point of view on the main methods and means of collection, checking and assessment of the proofs. From criminalistical point of view, the latter is the single acts of cognition (or proving) searched actual data presenting themselves a combination of the elements, which are necessary to design the criminalistical structure of the system

“crime”. In this connection, it is needed to mention the main goals of activity of the proving subjects that characterize, on opinion of the most part of the authors, the content of the stated procedural stages – collection (obtaining), checking and assessment.

In the books, collection (obtaining) of the proofs is presented as complex notion, including detection (quest, search), obtaining, fixation, and saving. It can be collected only those that have found and became known to a subject of proving. On this stage the subject of proving an actual matter not with proofs, and with actual data, which on his supposition might be become the proofs, i.e. with traces of an event, do not have yet status of procedural evidence (19, p. 79-80).

In the stage of collection of the proofs is revealed evidentiary information, its transmission and accumulation. In dependence on used method of cognition are changed the ways of information movement and level of its distortion during transmission. Wherein, in this process the different methods of cognition are played the various roles (26, p. 261-262).

Fixation of the proofs is a fixation of the actual data in established by the law order, after that it is allowed to consider them as the evidence on a case. Wherein, in criminalistic the accent is made not in “procedural certification and documenting of the gathered proofs” or fixation of the proofs in established procedural forms (32, p. 84), but in an indication of the objects of fixation – predominantly on material formations, and also in the means of fixation.

From the epistemological point of view the evidence fixation is presented itself a reflection of beforehand evaluated of their content. The result of reflection should give maximum full imagination about reflected object, adequately to pass those properties and characteristics, which make of it as the proofs. Under fixation the reflection has a selective nature: it is reflected only in such volume that presented to be necessary to the subject of fixation. In informational aspect we are speaking about passing information from one object in another one: with the proofs into material means of fixation (1, p. 176-180).

Determination of irrelevancy and admissibility of the evidence in this stage has also preliminary nature (6, p. 129).

In procedural plan the fixation of evidentiary information is expression of certifying activity of the proving subject. Fixation of the proofs is, first of all, a system of actions on establishing by the law the forms of actual data having significance for correct resolution of criminal case, and also conditions, means and ways of their detection and fixation (26, p. 229-230).

The objects of the impressing under fixation of the proofs are: the actual data; actions on their detection and fixation; conditions of their detection and fixation; means and ways of detection and fixation of the actual data and other objects of impressing (30, p. 99-100).

Procedural order of the fixation, as rule, is strictly regulated by the law. It is provided a procedural form, in which should be clothed the results of fixation, its requisites, sequence, the way of drawing into a case of the results of fixation, a way of their certifying, an order of their consecutive usage in the process of proving (14, p. 126).

Collection of the proofs is not an end in itself. They are needed be operated by them in the process of proving. They should be studied, investigated before to be used as the means of proving.

Investigation of the proofs is cognition of the subject of proving of their content, checking of existing reliability those actual data, which are formed this content, determination of relevancy and admissibility of the evidence and establishing of agreeability with all other proofs on a case (15, p. 96-97).

One of the important elements of investigation is a checking of the proofs, which is concluded: in analysis, investigation of a source of the evidence from the point of view of content and reliability, having in it data; clarification of relevancy and admissibility of the proofs; comparison with other sources of the evidence and the proofs in purpose of determination of agreeability them with each other; special checking actions with purpose of detection of new evidence confirming or refuting the reliability of presence proofs (16, p. 66-69).

Assessment of the proofs is a logical process that is allowed determining of a presence and nature of the ties between the evidence, role, significance, sufficiency and the ways of usage of the proofs to establish the truth.

The goal of evaluation is clarification: in what tie is this evidence with other collected on a case proofs, what is nature and significance of this proofs and combination of the evidence to find the truth; whether the combination of the proofs sufficient ground to recognize proved that or those circumstances of a case, for acceptance that or those procedural decision on a case; how might be used this evidence in the process of further proving (17, p. 169-178).

The key moments, in which is linked assessment of collected actual data are: decision on initiation of criminal case; moving forward primary versions and determination of the investigative direction; institution of a specific person to criminal responsibility and choosing of a measure of coercion; acceptance of the measures on overcoming counteraction to investigation; acceptance of the decisions about production of forced investigative actions; suspending or completion of the production on a case (18, p. 29-30).

To the aims of the proofs using are related: a) checking of the versions, other evidence, orienting and searching information on an object of its evaluation; b) substantiation of accepted decisions, final document on a case; c) modeling of investigative situation, mechanism of a crime, psychological portrait and external appearance of a criminal; e) obtaining new evidence, new operative and searching information; f) forming of the proofs complexes; g) demonstration of the evidence to the participants of a process in purpose of elimination of the substantial contradictions between the proofs, disclosure of the false testimonies and receiving new evidence and conviction in a senselessness of counteraction to investigation, and also in purpose of overcoming a collusion of accomplices (20, p. 111-119).

To the concepts that determining procedural stages of proving might be disposed from various positions, it can increase a number of the points of view on this issue, but a core is reminded unchangeable: the theory of proving is studied this process as

collection, checking, evaluation and use of the actual data, imprinting in appropriate sources of the proofs.

Let's try to interpret only those aspects, which have an attitude to criminalistical content of the proving process, and namely as permanent combination of the processes of proving flowing through all stages of a fight with criminal. Wherein we should note that research of this issue has at first sight slightly conditional nature as a mechanical division of the proving process into two constituents – procedural and criminalistical is wrong from scientific and practical point of view. This is the same that divide philosophy categories of the form and content (27, p. 117-119). Nevertheless, we would like to take attention into such particularity of profound activity of the proving process as designing of a form of stated process through the methods and means inherent only to criminalistics. This is undoubtedly allowed optimizing the work of all participants of criminal proceedings, which participate in realization of the main task of it – to achieve the objective truth in law enforcement activities (6, p. 111-115).

An essence of the criminalistical content of proving as empiric constituent of the procedural cognition can schematically try to draw from the content of criminalistical notion “evidence”, in which a notion “representativeness to a subject of proving” is determined by itself cognitive-communicative element of activity on searching, investigation and fixation of the elements of material structure of the system “crime” (16, p. 96-98). Wherein in a structure of the notions “evidence” and “proving” is had such their feature as communicativeness, which determines a content and nature of activity of the proving subjects directed to the process of transformation received information in appropriate procedural form to provide procedural cognition. In connection with this, it is necessary from position of criminalistics to concretize notion “cognition” under achievement of the truth, to determine the stages of implementing process, its scale and bounds. Criminalistical activity on proving is an empiric element, which on its scale is a wider than procedural proving. In this connection the proving from criminalistical point of view might be determined as implemented on all stages of the fight with criminal a complex activity of the proving

subjects on detection, investigation, checking, evaluation and fixation of the elements of an object of cognition – the traces-reflections of material structure of the system “crime”, which is necessary for decision of the tasks of criminal proceedings (30, p. 91-94).

The most interest for the theory and practice of the fight with criminal is an issue about improving of efficiency of functioning of the proving subjects on detection, investigation, fixation, checking and assessment of criminal information as a system of the traces-reflections of the crimes and criminal activity, and also more full and effective its transformation in procedural forms. The latter is an object of researching of criminal process and criminalistics. But only to the tasks of criminalistical investigation is related a development of the rules, methods, means of identification of the objects of the traces left as none of existing sciences research the material processes of reflection of such specific event as crime.

Criminal process develops evidentiary law – the most reasonable order providing establishing of the truth: generalization, synthesis, assessment of the facts, collected during preliminary investigation and court examination of a case. Evidentiary law teaches how to evaluate the specific facts and how to compare them, how to assess the system of facts, which in combination establishing an event of committed crime (13, p. 6). But, there is one side, which remains out of the bounds of evidentiary law – this is ability to find the facts, which are important for establishing of the truth on criminal case. It is not enough to evaluate and compare the facts, first of all they should be detected, and for that it is necessary to create theoretical basis of searching of the evidentiary facts. Criminalistics in general and criminalistical theory specifically are called to resolve a task of development of the scientific grounds of detection, investigation, fixation, checking and evaluation of the actual data, which are necessary to provide the process of proving of the system “crime”.

Resuming stated above, one may assert that on its content the proving is a procedural realization of criminalistically established material traces of a crime and the processes of its reflection in the material environments, testimonies, documents,



permanently implemented by the subjects of proving in all stages in order to establish the objective truth during criminal proceedings.

Unfortunately, (we have to note), in article 138 of the CPC of Azerbaijan Republic reads that “proving process is obtaining, checking and assessment of the proofs for establishing the circumstances having a significance for legal, found and fair resolution of accusation” (34, p. 154).

If to proceed from that establishing of the objective truth during proving is the establishing of a conformity and identity between criminal-legal matrixes of crime and designed by the subjects of proving its criminalistical model reached through application of criminal-procedural norms and rules then it is obvious changing of the aim of activity. A fair resolution of a case is the goal of the proving but not resolving of accusation, which is not mandatory element of criminal case. From our point of view, article 138 of the CPC in this part should be changed.

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