

**Problems of forming and functioning of  
a system of evidence assessment**

**Abstract:** It is considered structural elements of a system of evidence assessment.

System of evidence assessment consists from the elements of relativity, admissibility, reliability, sufficiency and aggregate of evidence, which are assessed on inner conviction, based on the law, legal conscience, comprehensive, full and objective examination of the proofs.

Suggestions on changing and supplementing of criminal and procedure legislation are given.

**Keywords:** system; assessment of evidence; subject of proving; inner conviction; relativity; sufficiency; aggregate; legal conscience.

Assessment of the evidence is a structural element of a system of proving and, in its turn, it presents a system, the elements of which are also the systems of lower levels. Stated directly based on normative definitions, stipulated in articles 33, 138 and 145 of the CPC.

In addition, there are no unified point of view in respect of contain (system) of evaluation of proofs. This have reflected negatively onto procedural constituents of its formation and functioning.

So, according to M.S. Strogovich, assessment of the proofs consists in conclusion about authenticity and unauthenticity of a fact proving, information of which is contained in this evidence [20, p. 303-304].

On opinion of R.S. Belkin, evaluation of evidence consists from establishing of presence and character of the ties between proofs, determination of a role,

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significance, authenticity and the ways of using of evidence to ascertain the truth [5, p. 199].

Y.K. Orlov, G.M. Reznik and F.N. Fatkulin consider that assessment of evidence includes a determination of relevance, admissibility, authenticity, significance and sufficiency [15, p. 66; 16, p. 71-72; 23, p. 111].

On opinion of L.D. Kokorev, evaluation of proofs consists in establishing of significance to determine the tasks of criminal proceedings [12, p. 111].

According to N.P. Kuznetsov, assessment of the proofs is a relevance of the actual data and admissibility of the forms, where this information is contained [13, p. 10].

V.Y. Dorokhov and E.A. Dolya consider that veracity is not an element of evidence assessment [8, p. 114-115; 7, p. 96].

It is interesting an assertion of N.B. Sibilyova, who includes criteria of ethics and scientific character in the evidence assessment [18, p. 32].

The modern researchers as O.N. Alekseyenko, A.L. Aripov, V.S. Balakshin, A.V. Zemtsov, A.A. Zubarev, A.I. Igonin, E.A. Novikova, A.V. Yartseva and other have different approaches to an issue in respect of structural elements of a system of evidence evaluation [1, p. 91-92; 2, p. 91-92; 4, p. 119-120; 9, p. 61-64; 10, p. 99-101; 11, p. 107-109; 14, p. 11; 24, p. 9-10].

According to article 145 of the CPC, every proof should be assessed on subject of relativity, admissibility and veracity. Combination all proofs, which collected on criminal prosecution, should be evaluated on base of their sufficiency for resolution of accusation.

An inquirer, investigator, prosecutor, judge or jurors assess the proofs according to their inner conviction, following to the law, his conscience, based on comprehensive, full and objective consideration of evidence combination. Doubts are construed in favor of suspected or accused individual if it is impossible to eliminate them with other evidence [21, p. 165].

Thus, the system of evidence assessment may be subdivided in subjective, objective, operational and determining, the elements of which are in interrelation and

interdependence. In this aspect we are not talking about proving stage as the assessment of evidence we consider as its (proving) structural element.

According to article 33 of the CPC, during carrying out of criminal proceedings, judges and jurors, in compliance with requirements of the CPC, are assessing proofs, which collected on criminal case.

During production of criminal proceedings a violation of the provisions of articles 125, 144-196 of the CPC is not allowed.

None evidence or other material has in advance established force in criminal process.

Biased attitude of the judges and jurors to the proofs and other materials, attaching to one proof or other material bigger or smaller significance before examination in frame of existing legal procedure are not allowed [21, p. 26-27].

It is more than obvious a declarative and contradictory nature of the provisions indicated. This issue is a subject of especial researching. But, in the present paper these provisions are being considered in aspect of the subject of evidence assessment.

Content of the articles 33 and 145 of the CPC is allowed to assert that a lawmaker considers a subjective component of the evidence evaluation only in criminal procedure aspect, which is explainable for the CPC, but does not correspond to the purposes and tasks of it.

In our opinion, the CPC should be give criminalistical notion of evidence assessment as a process, which is total for all participants of proving, but not only for the bodies carrying out a criminal process. In acting interpretation the law does not resolve an issue how should be evaluated proofs by a defence party and other participants of process; the same as an inquirer, investigator, prosecutor and judge or differently; whether they should assess evidence and how this assessment will be correlated with evaluation other participants of process etc.

Wittingly or unwittingly, evaluation of evidence in criminalistical aspect is produced by all participants of process. Presenting some data, documents or items, doing information, accepting and studying information received, the participants of process determine its correspondence or reflection of the moments of objective reality

in it. Without entering into the variety of existed ideas on this issue, pushing a resume into the foreground and basing on it, we just note, that from our point of view, the assessment of evidence in foreshortening of Azerbaijani criminal process and criminalistics – this is determination of identity of information received with its subjects of objective reality.

Veracity information about which is spoken in article 121.1 of the CPC is, first of all, information, actual data, reflected and kept past events or their elements, picture or pictures, restored by the parts.

Identity by the parts will be established with certain probability, and in whole should be full, which is allowed asserting about proven act, corresponding of the proofs – actual data – reality.

In connection with stated, all participants of criminal proceedings, taking part in proving, should be determined as the subjects of evidence assessment, and in articles 33 and 145 of the CPC the words “an inquirer, investigator, prosecutor, judge or jurors” should be replaced by the words “subject of proving”.

It seems that a problem of evidence collection is directly associated with issue about the subjects of evidence assessment.

According to article 143.1 of the CPC, collecting of evidence is carrying out during preliminary investigation and proceedings through interrogation, confrontation, search, seizure, inspection, expert appraisal, submission for identification and other procedural actions.

Article 143.3 of the CPC says that in cases, which are provided with the CPC, a defender has the right to lodge evidence and collect information to provide a legal aid, to obtain explanations from individuals, to require various documents from organizations.

According to article 143.4 of the CPC, suspected, accused, defender, prosecutor, physical and legal entity have the right to present items and documents, and also registered or written information, which may be recognized as evidence [21, p. 157].

Taking off obvious blunders of stated statements, we note only that content of article 143.1 of the CPC excludes collection of the most kinds of evidence by other

participants of process except an inquirer, investigator, prosecutor and court, and accordingly their evaluation. This will be logical deduction, but not assessment in essence of article 145 of the CPC.

Relevance, admissibility and credibility as the elements of system of evidence assessment will be considered especially and due to we will consider in details the issues of credibility and aggregate.

Under this, we should in advance say that provision mentioned in article 145 of the CPC about “relevance for resolution of accusation” is presented wrong as this case an entry list of evidence evaluation becomes smaller and proving subject on a case is limited.

From our point of view, in spite on seeming clarity, an issue about sufficiency of the proofs is also problematic.

As it known, comprehensive and complete elucidation is one of the tasks of criminal proceedings (art. 8.0.3 of the CPC), which associated with criminal prosecution [21, p. 12]. Due to in various stages of proceedings the issues on sufficiency of evidence and completeness of investigation are resolved by different subjects of proving, then accordingly the assessment of this circumstance is different. It is very often, what is sufficiently for investigator, on some subjective grounds is insufficiently for prosecutor or court, which motivating their decisions by incompleteness of investigation, and artificially retard of it – “ruin the case”, as it would have not sound rude.

Thus, criminal case about theft from home of “F” done by “A” three time had been came back to an investigator for production of additional investigation with instructions of prosecutor about production of those or other actions. Two times prosecutor’s office of Baku and Republic gave written instructions in respect of the case. Moreover, it stated to produce actions, results of which had concerned a subject of proving, nothing had suggested out of this case. With one proviso: these circumstances of a subject of proving had been ever confirmed by other evidence, collected by investigator. But prosecutor’s office recognized them insufficiently. As

result, the case was bureaucratized, and it got judicial nature after interference of Prosecutor General [3].

It is possible objections that completeness of investigation and sufficiency of evidence are the notions of different levels and categories, that sufficiency determines completeness etc., but one is obvious: without clear instructions of the law these notions will always be a subject of wishes and goals.

Provision about combination of evidence is pointed out in article 145 of the CPC twice. First case is spoken about necessity of assessment of evidence combination, and second one, combination of evidence is stipulated as an instrument of the evidence evaluation. Certainly, this refers the notion to the structural elements of a system of evidence assessment.

Inner conviction, guidelines with the law, conscience, thoroughness, completeness and objectivity of consideration of evidence combination and an order of interpretation of the doubts are related to other structural elements of a system of evidence.

Conscience is a notion of relative, which has ability to be appeared, disappeared or camouflaged. Using a similar category in criminal procedure legislation is presented wrong.

As it known, in article 66 of the CPC of Azerbaijan SSR of 1960 a lawmaker called legal conscience as a base for assessment of evidence on inner conviction [22, p. 44], a role of which is ambiguously evaluated by researchers. So, a number of authors act against provision on necessity to be guided with legal conscience, considering that it is engrossed with requirement to be guided by the law [17, p. 8].

Other authors believe the legal conscience as basis of evidence assessment as, according to them, completeness using of procedural law and interpretation of the main postulates of proving depends on it [19, p. 122-123].

From our point of view, legal conscience should be included in a system of evidence evaluation especially as article 25.3 of the CPC says about inner conviction and legal conscience.

In modern interpretation under legal conscience is understood the combination of ideas, views, assessments and emotions, through which is expressed an attitude of a man and public unions to the current law [6, p. 463] that gives grounds to assert about its moral components.

Resuming above stated, we may assert that a system of evidence assessment consists from the elements of relevance, admissibility, veracity, sufficiency and aggregate, which are evaluated on inner conviction on base of the law, legal conscience, comprehensive, complete and objective consideration of evidence combination.

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