

Goals and principles of proving as procedural criminalistical activity

Abstract: Activity on proving is an independence kind of criminalistical activity and is mandatory included like integrated component into all other kinds of criminalistical activities.

Being the goal of criminalistics, criminalistical proving at the same time is a mandatory component of general activity on the administration of justice, has to provide indicated function of a court.

The principles of proving, formulated at the Chapter 15 of the CPC of Azerbaijan Republic, are the basic for carrying out of activity on criminalistical proving of sought facts.

Keywords: proving; criminalistical activity; functions; goal; principle; system of proving; subject; normative fixation.

Proving is a mandatory element of thought of any kind of human activity. This is necessary term of an activity, which should be observed before decision's acceptance, in course of conviction's formation. In equal extent, proving is an obligatory element of such activity where one should be formed own conviction for accomplishment of the activities, acceptance of the decisions, management of technological processes, actions of other persons [2, p. 11].

Obviously, that there should not be established the truth in criminal process, but it should be mandatory proved.

As it is known, there the most important goal of preliminary investigation is to provide a court with full volume of evidential facts, on basis of which a court may form its conviction on all listed positions and to make a decision – to administer justice.

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In order to gather at preliminary investigation and to submit to a court all necessary evidential material there should be done major efforts on collection, checking, evaluation of this material, on formation of conviction in its truthiness, completeness, and quality.

Proving forms an investigator's conviction, which is passed by him to a court through all collected facts, their analysis and synthesis, carrying out during preliminary investigation. Therefore, proving plays especial role on administration of justice. Court should be made sure that criminal event, in which a defendant is accused, is happened and it was committed just by the defendant. Court should be convinced in his guilt in committed crime and the defendant will be fair punished. Conviction is produced through process of proving in each of the listed cases [6, p. 72].

Thus, help in formation of conviction to a court is one of the functions of proving. Determining with Criminal Procedure Code an inner conviction of a judge should be formed only through process of proving

In total we may conclude that proving: activates whole process of cognition at preliminary stage and at the stages of crimes' detection and trial investigation; provides completeness of collection, studying, checking, and evaluation all evidential facts, their fixation in the checking materials or criminal case; submits to a court the results of its work on proving done at previous stages of combat to criminality.

Obviously, that being most important and mandatory part of activity of authorized subjects at the stage of crimes' detection and at pre-trial and trial investigations, at the same time, proving is goal of scientific working-outs in criminal process and criminalistics. Appearance of such goal in criminalistics is an objective result of the development of the science and extension its ties with criminal law and process that, in turn, is a result of general development of democratic reforms in justice system [7, p. 11-12]. Owing just to proving at pre-trial stage a court receives checked and evaluated by all process' participants evidences collected with observance all terms and guarantees provided for preliminary investigation.

Being a goal of criminalistics, criminalistical proving at the same time is an obligatory constituent of general activity on administration of justice, has to provide indicated function of a court.

Like an obligatory function of science of criminalistics and criminalistical activity, proving makes very important commonly-social function – convinces a society in effectiveness and fare of justice [10, p. 61-62].

As it known, proving is a base of realization of procedural functions of an investigator, and from other side, it expands opportunities of an investigator to impact into accused person who gives false testimonies and tries to contract to collection of evidences [11, p. 112]. The investigator may use the results of his activity on proving for conviction of accused person in necessity to stop contraction to investigation and give his consent to cooperate for establishing the truth.

Proving is also a process of organization of activity on discovery of criminal relevance facts at the stages of crimes' detection, pre-trial and trial investigation. This process is sufficiently developed through procedural understanding like a collection, checking and evaluation of evidences at each stage of combat to criminality [12, p. 26-27].

Proving combines all kinds of activity to achieve of the goals of criminal process and criminalistics and at the same time is a part of the content of these kinds of activity and the result of them. It cannot be established the circumstances of criminal event without proving, detected crime, executed actions to prevent similar criminal behaviour in future.

Thus, proving is an independence kind of criminalistical activity and a mandatory constituent element all kinds of criminalistical activity [15, p. 68-69].

Proving fulfills an especial function in a system of goals of criminal prosecution – it is a connecting element for all other goals.

Proving does not exist itself: it supposes a collection of evidences, and at the same time, there cannot gather evidences not taking in account simultaneous execution of proving process.

It said above means that proving is characterized with exclusively versatile significance. It is important: for realization all goals of criminalistical and procedural activity; collection of all necessary evidential facts at stage of investigation; realization of the function of accusation at pre-trial and in court; ensuring of unavoidability of punishment for committed crime; ensuring the rights of accused person at pre-trial investigation; providing of a court with all evidential facts to administer of justice [2, p. 262-265].

General goal of proving is a collection of evidences, their checking and assessment to provide the consequent activity of a court on usage of evidences, formation of conviction, in basis of which is administered justice.

Under this, distinctive feature of proving is manifested in its directness. Subject of proving is obliged to make sure not only himself in availability of evidential facts, ties between them, but he has to convince a court in this. Therefore, proving requires that all established facts would be procedurally stated, fixed, and reflected in the materials of criminal case. Moreover, there is required observance of such precautionary measures in order all established facts, ties between them could be reproduced, checked in a court during administration of justice, i.e. under realization of proving process in course of trial investigation.

In our point of view, a system of proving is formed: a) designing and realization by authorized subjects of criminal legal matrix of crime in order to ensure legality under resolution of a case; b) carrying out proving at each stage of combat to criminality in order to establish all circumstances for making procedural decision by the subjects of proving, prosecutor and court; c) realization at each stage of combat to criminality all stages of proving stipulated by criminal procedure law in order to achieve a well-founded and fair resolution of criminal case; d) creation of condition all interested persons of criminal process for participation in proving processes at preliminary investigation; e) formation of whole thinking imagination about crime event, on actions, intention and motives of behaviour of accused person [7, p. 11-13].

Proving is necessary element of activity directed to formation of an investigator and other participants' conviction, including accused person. This imagination about

crime event is provided with proving through consecutive establishing various types of links between facts, actions, and events. To reach this goal in process of proving there are developed and fixed the ties – traces-reflections of a system of “crime”; systemic links established and establishing facts (elements of structure); cause-effect relations between actions and results, various events, phenomenon etc.

Achievement of each listed goals comes through development and resolution of tasks’ system, which also determines a subject of criminalistical proving concept.

Consequently, formation of a system of proving goals and also definition of tasks’ analysis, which should be decided for achievement of each goal, allow once more making sure in necessity of working out and development of special concept of criminalistical proving, in frame of which should be carried out an investigation of stated problems.

An issue on legal principles of acknowledgment of law enforcement activity is traditionally one of the most important in juridical science. This also acts in private theory of crimes’ detection and in criminalistical concept of their proving.

Under this, we should remember that the principles of proving, stipulated in Chapter 15 of the CPC of Azerbaijan Republic, are basic for carrying out an activity on criminalistical proving of sought facts.

In its turn, the principles of carrying out of criminalistical proving are built on basic principles established with criminal procedure science.

All procedural forms of proving, all institutes and norms of evidential law are based on the principles of criminal process, are expression and concretizing of these principles. Evidential law is a central part, a core of procedural law, and proving is a process of realization of evidential law. Therefore, all principles of criminal process have an attitude to evidential law and are its principles. One of them are directly and immediately, and other – indirectly influence to a process of proving, directing the proving process to achievement of the truth.

In addition, we should note that M.S. Strogovich, M.L. Yakub and others were undertaken an attempt to formulate independent principles for evidential law in theory of criminal process: a principle of achievement of material truth as goal and

result of evidences' usage; principle inner conviction of judges as a base of evidences' assessment; principle of presumption of innocence [16, p. 166-167; 18, p. 109].

Though, an idea of creation of independent principles in theory of proving was not supported in procedural literature. So, according to I.L. Petrukhin, "first, in evidential law and proving there are found an application also of other principles of criminal process (legality, right to defence, oral nature of judicial proceedings, directness etc.). Second, enumerated principles have a general procedural nature" [13, p. 328].

This position was expressed by I.P. Snegirev in most concentrated form. He noted that attempts to distinguish any special principles of proving, which would exist together with common principles of criminal proceedings, parallel to them, are not justified, as either is belittled significance these or those principles of proceedings, and they are come to proving only or actions of some provisions are applied to proving issues [15, p. 106-107].

In our point of view, some principles, which characterize criminalistics as a science, simultaneously may be acted like the principles of criminalistical proving, as in spite of the fact that empiric basis of procedural proving is an activity on establishing of reflection system of committed offense, but it has a different structure and methods of realization [14, p. 44-45].

In additions, we should note that the principles of activity on proving have not worked out in criminalistics, and we have told only about the principles of criminalistical methods of crimes' investigation [9, p. 116-118].

Studying an issue of a content of the criminalistics' principles, R.S. Belkin wrote that under the principles of criminalistical science should be understood those primary provisions, which determine epistemological directness of criminalistical scientific research, considering under this the latter as one of the varieties of integrated process of scientific cognition of objective world. This understanding of the principles of criminalistics allows making a conclusion that in indicated sense it cannot be any specific principles of the knowledge branch, and this is an application

of general principles of a science to cognition of specific subject of criminalistics [5, p. 171].

According to R.S. Belkin, the principles of criminalistics, like any other area of scientific cognition, are the following: principle of objectivity; principle of historicism; principle of systemacy of science [4, p. 238].

It seems that the conclusions of R.S. Belkin contain certain discrepancies. In one side, they are indicated that there cannot be any special principles of studied branch of knowledge, and other one – it is noted a precise directivity of produced criminalistical research like a variety of scientific cognition process of objective world. But, a process of criminal proceedings is a purposeful activity of numerous subjects of detection and proving of criminal facts discovered. In reality this activity like a principle of its carrying out, should have an imperative, authoritative-regulatory nature as it should contain mandatory instructions, execution of which provide effective development of a process of combat to criminality [6, p. 69-70].

In our opinion, main in this issue is that criminalistics is traditionally seen in correlation with theory of evidences as serving science, providing administration of justice. In one side, it allows carrying out of proving process, and other one – to develop the techniques and ways of conducting of investigative actions in these purposes. Everything is true, but criminalistics is a science, with help of which there is possible an independence way of truth cognition in process of criminal proceedings. Under this, an activity directed to achievement of the truth should be carried out a purposefully, systematic, and offensively. Just following to the principles, regulating a content of work on crimes' proving, allows considerably optimizing activity of the subjects, authorized at combat to criminality.

The principles postulates implementation into practice of stipulated legal requirements as if the principles are not formulated and presented in content of normative base regulating of activity on detection, disclosure and proving of crimes then, according to S.S. Alekseev, they are “elements of legal ideology” and cannot coordinate and regulate of this activity [1, p. 93]. Therefore, it is necessary a careful

scientific development of studied principles as these and those are fundamental for formation of instructions' system in law regulating this fight.

The principles reflect of regularities of activity and in its content are objective. In addition, they present of volitional act, product of conscious creativity of a lawmaker and on a form of legal expression are subjective. Nature of the principles of objective and subjective is manifested in unity of the two sides [8, p. 45]. It is justly noted that unscrupulousness in combat to offenses and illegality is a source of the hardest errors, from which had suffered a lot of innocents. There is no gradation here: to observe rules of the law at all cases, in the most cases or in some of part [8, p. 40].

It seems that conditions of evidences' collection might be accepted as main principles of proving, considered by A.R. Belkin [3, p. 2-3].

First condition is concluded in unconditional observance requirements of the law under collection of evidences. This means: usage of legal ways of evidences' collection, which are stipulated with the law; usage of legal ways of evidences' collection only in frames of such procedure, which is established by the law; providing only authorized by the law persons with the right to collect of evidences; objectiveness, impartiality in collection of evidences.

Second condition of gathering of evidences is to provide a completeness of collected evidential material. All procedural actions on collection of evidences should be carried out qualitatively, carefully; none of evidences, sufficient for a case, should be beyond of the subjects of proving.

Third condition of evidences' gathering is promptness actions on their collection. The promptness collection of evidences is concluded in correct choice of conduction moment any investigative action on collection of evidences. If this action is an urgent then it should be carried out as soon as it needs; if moment of production such action is determined with some tactical ideas then it should be taken into account by an investigator.

Fourth condition is concluded in observance of necessary guarantees of reliability of information about received actual data and is provided: with choice of reliable sources of evidential information; observance those tactical conditions and

techniques of investigative actions conducting, which create prerequisites for obtaining of reliable results; application of such technical instruments, which allow to discover, fix and save the evidences [3, p. 11-126].

This classification of the principles might be considered as exhausted if process of proving to justify only with activity of proving subjects at the stage of preliminary investigation and to determine these principles only as the provisions of method of activity' organization on carrying out pre-trial investigation. In this case one may say about determination of method and tactics of most effective conduction of checking and assessment of criminalistical instruments of proving through fulfillment of tactical operations and actions, directed to forming of a system of procedural evidences with purpose of determination of identity of common criminalistical model of crime with its criminal legal model through formed procedural evidences.

But, two groups of activity principles are remained beyond of studying: a) principles of detection, examination, checking, fixation and assessment of crime's structure, criminal activity, reflection of crime and reflection of criminal activity; b) principles of designing of criminalistical models of proving.

Consequently, one may ascertain that formation of theoretical bases of proving gives an opportunity to determine a system of the principles, on which should be arranged a system of tactical activity on proving. The system should be included: procedural principles of proving conduction; logical and psychological principles of proving; organizational principles of proving; criminalistical principles of proving.

Speaking about system of proving principles, there necessary to note that they have constitutional nature, and therefore, cannot be established any hierarchy among them. It is possible only to divide the principles into common legal and special ones. Briefly consider the principles relating to the first group, which are practically identical to the principles on content, stipulated in Chapter 2 of the CPC of Azerbaijan Republic.

Legality like a principle of activity on criminalistical proving of crimes implies an exact fulfillment with its subjects the requirements of the Constitution, Laws of Azerbaijan Republic, criminal procedure legislation, and other legal acts, which

should be clear determined: goals and instruments of their achievement; tasks; principles of fulfillment of indicated activity; circle of discovering of criminal pertinent facts and their proving; their legal status and system of interaction [7, p. 9-10].

Principle of legalism supposes also permanent work of prevention of crimes; ensuring of security of a personality, society and the state; providing of unavoidability of punishment of guilty persons; strict providing a legalism in country.

Legality of the actions in researching direction is guaranteed with the fact that they might be started and carried out only in interests of search, fixation of criminalistically significance information, other data and traces of crime that need for institution of criminal case, further establishing and punishment of concrete persons involved in criminality.

Principle of proving on a base of procedural instruments directly comes from the principle of legalism. Here, we should note that proving process, as rule, is led to criminal procedural activity, and this, unconditionally, corresponds to reality. Though, indeed, implementation of proving through procedural norms and rules are one of the principles of studied process as proving is a permanent combination, but not a sum of the proving processes, including at stage of crimes' detection [10, p. 162].

Principle of equality of each before the law and court supposes that measures directed to crimes' proving are carried out independently on a post of suspected or accused person, social or material state, citizenship, sex, age, nationality, education, political and religious views, belonging to parties or other public organizations [17, p. 13-14].

Principle of objectivity, impartiality and justice of criminal proceedings obliges of the subjects to fulfill appropriate work not only in response of received statements and information about committed crimes, but also in course of execution of their functional duties in order to find additional materials and other latent crimes. In connection with this, it is necessary to find out the circumstances as facing so and

justifying of suspected person and to accept all measures on crimes' prevention [17, p. 22-23].

As for special principles, a principle of proving design at the base on procedural stages is at the following. Despite procedural theory of proving does not allow clearly dividing this process at appropriate stages, proving is built on procedural staged and consists on a collection, checking and evaluation of the evidences. But, we should note that collection, checking and evaluation of the evidences are carried out at two stages: as under implementation of proving process at all stages of combat to criminality so and simultaneously under realization of criminalistical proving – under collection, examination, fixation, checking and assessment of the elements of criminalistical structure of a system of “crime”; construction of criminalistical model of proving like an empirical basis of criminal procedural cognition; determination of method and tactics of more effective checking of criminalistical instrument of proving directed to formation of a system of procedural evidences; definition of identity of general criminalistical model of crime with its criminal legal model through forming of procedural evidences etc.

From this principle is come a principle of implementation of proving process at the base of system approach and structural unity of implementation of activity on detection and criminalistical proving of crimes at all stages of combat to criminality.

Crime might and should be considered as a system like and a process of proving should carried out as a procedural realization of criminalistically established processes of reflection of crime in appropriate environments, systematically and permanently fulfilled with the subjects of proving at all stages in order to reach objective truth in process of criminal proceedings [9, p. 201-202].

This principle supposes an algorithm of activity of the proving subjects is the same like at a stage of crimes' detection, pre-trial and trial investigation. It directs to establish and prove a fact of crime and criminal behaviour of guilty persons on various manifestations of these facts in material environments, testimonies and documents, i.e. at the base on establishing of structural elements of a system of

“crime”, and also changes at other systems, to which the latter interacts [12, p. 199-200].

Principle of system approach supposes of usage of the principles: a) of a permanence and structural unity of an activity on detection and criminalistical crimes’ proving at all stages of a fight to criminality; b) of reconstructive and checking ability of established elements of a system of “crime”; c) of taking part of all participants to activity on detection and crimes’ proving, which may and obliged to carry out it at all stages of a fight to criminality [15, p. 116-118].

Principle of optimal providing of activity on detection and crimes’ proving with criminalistical knowledge and usage, when is implementing a criminalistical proving of the provisions of a theory of reflection, consists in the following.

As it noted, a theory of reflection is a main methodological basis of criminalistics and accordingly a methodological basis and a principle of criminalistical proving. Through this theory is carried out: a) cognition of peculiarities of reflection of the objects and subjects, which are the elements of a system of “crime”; b) designing of a system of reflection of crime’s event; c) cognition of a form and content of objects and subjects on their reflection; d) development of the ways and instruments providing a completeness of objective reflection in materials of criminal case of subjectively perceived facts of actuality [15, p. 166-167].

Therefore, a process of proving might be considered as reconstructive activity on formation of specific systems of the relations of a previous criminal event. The systems of material, intellectual and documentary reflection are used in this process. One of the important peculiarities of criminalistical proving consists in the fact that all enumerated above systems of reflections are mandatory transformed and formed into the single system of crime’s reflection. Therefore, a base of criminalistical cognition is establishment of the elements of crime’s structure, their links and interactions through remained reflections of listed processes, general theory of reflection assists of justice. Process of cognition is carried out only through

reflection. Consequently, indicated reflections are fulfilling also a function of the facts' proving, actions, deeds, which were committed. Thus, only knowledge and usage of theory of criminalistical reflection may provide a complete proving of happened event, a role of accused person in it [9, p. 199].

Various levels of criminalistical knowledge, functional opportunities of practical realization of criminalistical supporting, completeness of an activity on detection and crimes' proving – come to necessity of using of a complexity principle in activity of each body. This means that there should be made the tasks on mutual measures with other controlling bodies under organization of auditing, checking, inspections, operational searching measures and investigative actions.

From the principle of complexity of detection and crimes' proving comes the principle of development of method and tactics of contraction's overcoming to establishing of concealment facts of crimes and criminal activity, and also to a process of proving that carried out by its subjects at all stages of fight to criminality.

We should be especially considered a principle of mandatory legislative and normative fixation of the elements of activity on proving of crimes as there is no sufficiently to build a system of detection and proving of crimes. It is necessary to determine all structural elements, content of their activity in the normative documents; clearly to present an activity of the subjects of proving at all stages [12, p. 291].

All subjects of indicated activity may active carry out their functions only if these functions are normatively fixed.

It seems that a legislation of Azerbaijan Republic should be stipulated a few levels of regulation and providing of a system's activity on detection and proving of crimes. More general level of normative regulation should determine the general goals of indicated activity, main direction and stages of development of it. The normative document has to contain the ways of control for this activity, determine a body, which has to manage with all processes of detection and proving of crimes, to coordinate this work.

At the second level of the normative regulation there should be developed the documents about interaction between various subjects, fulfilling the functions on detection and proving of crimes, at the third level there should be provided the normative regulation on detection and proving of crimes carried out by each subject.

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