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Activities of the court to investigate the circumstances of criminal proceedings and their assessment under the laws of Ukraine

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Abstract

Sand investigates the procedural possibilities of the court to investigate the circumstances of the criminal process at the trial stage, by analyzing the current criminal procedural legislation of Ukraine, judicial practice, the positions of scientists, as well as by using modern methods of scientific knowledge (dialectic, systematic analysis of legal norms, comparative, statistical, synergistic, hermeneutic, structural, and formally dogmatic system). It also clarifies the essence of scientific and legal categories such as «circumstances of criminal proceedings», «verification of evidence», «evaluation of evidence», etc. It was concluded that during the trial the evidence is examined in accordance with a certain procedure and with the participation of the participants in the criminal proceedings, who have the right to ask questions, draw the attention of the court, lodge appeals, etc. Investigative (search) actions have been identified as the most common procedural means of examining evidence in criminal proceedings. It is emphasized that the evaluation of the evidence by the court, unlike inspection, is not combined with any practical action and is a purely mental, logical activity, which aims to determine the admissibility, relevance, reliability, value (strength) of each.

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Keywords: court in Ukraine; criminal proceedings; evidence; circumstances of a crime; evaluation of evidence.

Actividades del tribunal para investigar las circunstancias de los procesos penales y su evaluación con arreglo a las leyes de Ucrania

Resumen

Se investigan las posibilidades procesales del tribunal para investigar las circunstancias del proceso penal en la etapa de juicio, mediante el análisis de la legislación procesal penal actual de Ucrania, la práctica judicial, las posiciones de los científicos, así como mediante el uso de métodos modernos de conocimiento científico (dialéctico, análisis sistemático de las normas legales, derecho comparado, estadístico, sinérgico, hermenéutico, sistema -estructural y formalmente dogmático). También, se aclara la esencia de categorías científicas y jurídicas como «circunstancias del proceso penal», «verificación de pruebas», «evaluación de pruebas», etc. En particular, se concluyó que durante el juicio la prueba se examina de acuerdo con un determinado procedimiento y con la participación de los participantes en el proceso penal, quienes tienen derecho a formular preguntas, llamar la atención del tribunal, presentar recursos, etc. Las acciones de investigación (búsqueda) han sido identificadas como el medio procesal más común para examinar pruebas en procesos penales. Se enfatiza que la valoración de la prueba por parte del tribunal, a diferencia de la inspección, no se combina con ninguna acción práctica y es una actividad puramente mental, lógica, que tiene como objetivo determinar la admisibilidad, relevancia, confiabilidad, valor (fuerza) de cada uno.

Palabras clave: tribunal en Ucrania; proceso penal; prueba; circunstancias de un delito; evaluación de la prueba.

Introduction

Large-scale transformational changes in society, which are characteristic of the beginning of the new millennium, have put many new challenges «on the agenda» before humanity. The progressive development of all countries of the world, including Ukraine, which constitutionally declared itself as a sovereign and independent, democratic, social, legal state, depends on their solution (Article 1 of the Constitution of Ukraine) (Constitution of Ukraine, 1996).

The Strategic Plan for the Development of the Judiciary of Ukraine for 2015-2020 emphasizes that it is the state's responsibility to provide its citizens with an effective remedy and the right to a fair trial in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms. (Strategic Plan For The Development Of The Judiciary Of Ukraine For 2015-2020, 2012). Judicial reform also provides for the renewal of the criminal procedure law (Strategy for the Reform of the Judiciary, Judiciary and Related Legal Institutions for 2015–2020.) (Strategic Plan For The Development Of The Judiciary Of Ukraine For 2015-2020, 2012). The main purpose of such an update is to improve the procedural provision of justice and the right to defense during criminal proceedings (). Such legislative approaches encourage theoretical and praxeological discussion, actualize the discussion of issues of optimization of the court's research and assessment of the circumstances of criminal proceedings.

According to modern opinion polls, society has less and less trust in courts and judges. Thus, the level of trust in the judiciary of Ukraine among the persons who participated in court proceedings is 40%, and among the persons who were not participants in court proceedings, 13% (All-Ukrainian Survey Of Citizens On Democratic Change In The Political And Social Spheres, Judicial Reform And The Process Of Cleansing The Government In Ukraine: Summarizing The Results Of The 2016 Study And Comparison With Data For 2015, 2016). One such factor is the unjustifiably lengthy consideration of criminal proceedings in court. Proper and timely consideration of criminal proceedings, able to ensure an adversarial criminal process which is a characteristic feature of the modern rule of law. This fact should encourage a rethinking of certain forms of functioning of the judicial system, taking the necessary measures of theoretical, legislative and applied nature in this direction.

Changes in the field of criminal procedure legislation have put on the agenda a revision of many methodological provisions of the criminal process. This is due to the fact that the amount of modern scientific knowledge is increasing extremely rapidly, while changing and improving legislation. This, in turn, necessitates the improvement of existing and the creation of new, more effective methods of learning and practical application of knowledge. The reform of the criminal procedure legislation and the judicial system of Ukraine highlights, in particular, the need for a comprehensive scientific study of the powers of a judge to study and evaluate evidence in the judicial process of Ukraine.

1. Methodology of the study

To achieve the goal set in the scientific article, general scientific, philosophical and special methods are used, in particular: dialectical method of cognition - in clarifying the essence of such concepts and categories as «study of circumstances», «evaluation of evidence», «activity» and «initiative», analysis of their common and distinctive features; systematic analysis of legal norms - to identify gaps and inconsistencies in regulations and formulate proposals for improving existing legislation; comparative law - to compare the rules of criminal procedural law of Ukraine and the provisions of other regulations in terms of investigating the circumstances of a criminal offense by the court at the stage of trial; statistical - for research of materials of criminal proceedings, statistics and generalization of the received results; synergetic, hermeneutic, system-structural and formally dogmatic - to clarify the specifics of the judge, to identify the system of relationship and interaction with other subjects of criminal proceedings, to formulate proposals for improving criminal procedural law. The use of all research methods in conjunction ensured the persuasiveness and reliability of scientific research results.

2. Analysis of recent research

With the adoption of the new Criminal Procedure Code of Ukraine in 2012, issues related to court proceedings received somewhat different legal regulation. In particular, numerous provisions of the criminal procedure law are aimed at ensuring the real adversarial nature of the parties, introduced many other positive novelties, aimed primarily at protecting the rights, freedoms and legitimate interests of man and citizen.

The legislator repeatedly uses the concept of «examination of evidence» in relation to the stage of the trial (Articles 319, 322, 339, 349, 352, 357, 358, 359, 386 of the Criminal Procedure Code of Ukraine) (Criminal Procedure Code Of Ukraine, 2012). All subjects of criminal proceedings are endowed with certain powers, rights, and responsibilities in the field of evidence. The nature of these powers, rights, and responsibilities, of course, is different and depends on the criminal procedural function of the subject, his interest in criminal proceedings, the general criminal procedural status, etc. (Lytvyn, 2016).

The participation of the court in the evidence in criminal proceedings is accompanied by numerous procedural and applied difficulties and requires an immediate solution. Given the controversial nature of certain provisions of the Criminal Procedure Code of Ukraine in terms of the court's exercise of its powers at the trial stage, the question arises: how can a court in criminal proceedings investigate the circumstances of a crime and assess them?

Problematic issues of court participation in the study of the circumstances of criminal proceedings and their assessment in criminal proceedings were the subject of research of such domestic proceduralists as V.O. Gryniuk (2012), Yu.M. Groshevyi and S.M Stakhivsky (2006), O.I. Korovaiko (2010), V.Ya. Korsun (2011), T.V. Lukashkina (2013), V.T. Nor (2013), O.V. Rybalka (2013), V.I. Slipchenko (2009).

Most of such works relate to the general provisions of evidence in criminal proceedings, while only some modern works are devoted to the study of our issues. This necessitates the need to clarify the possibility for a judge to directly conduct research and evaluation of testimony, things, documents in criminal proceedings.

Today in the doctrine of criminal procedure the issue of court activity is debatable, and scientific positions vary from the requirement to complete, comprehensive, objective investigation and establishment of objective truth to the court and to the complete denial of the possibility of court manifestations of any forms of activity. do not correspond to the essence of its procedural function (Kuchynska, 2011). Clarification of this issue is important to determine the degree of activity of the court in the examination and evaluation of evidence.

3. Results and discussion

It is legally defined (Article 23 of the Criminal Procedure Code of Ukraine) that the court examines the evidence directly and receives the testimony of the participants in the criminal proceedings orally. It follows that the oral testimony of the participants in the criminal proceedings as a result of their direct examination during the trial is perceived and evaluated by the court on the basis of the so-called internal conviction of the judge. (Criminal Procedure Code Of Ukraine, 2012).Failure to comply with the principle of immediacy leads to a violation of other principles of criminal proceedings: the presumption of innocence and proof of guilt, ensuring the right to defense, adversarial parties and freedom to present their evidence and prove their persuasiveness before the court (paragraphs 10, 13, 15 of Article 7 of the Criminal Procedure Code). Code of Ukraine). Therefore, the principle of immediacy is a necessary element of the procedural form of trial, non-compliance with the court, based on the content of the second part of Article 23 and Article 86 of the Code, means that evidence that was not the subject of direct investigation of the court cannot be considered admissible and taken into account. The decision of the court, except in cases provided by the Criminal Procedure Code of Ukraine, and therefore, the court decision in accordance with Article 370 of the Code cannot be recognized as lawful and reasonable.

In addition, the rules of criminal procedure law on the invariability of the court ensure the direct perception and evaluation of evidence by all judges from the beginning to the end of the trial, guarantee the comprehensiveness, completeness and objectivity of all criminal circumstances, without which it is impossible to rule lawfully, reasonably and fair sentence.

The court to verify the relevance, admissibility and reliability of evidence provided by the parties to the criminal proceedings, has the power: to include issues in the decision to conduct an examination (Part 3 of Article 332 of the Criminal Procedure Code); ask questions during the interrogation of the accused (Article 351), witnesses (Article 352 of the Criminal Procedure Code), a victim (Article 353 of the Criminal Procedure Code) or an expert (Article 356 of the Criminal Procedure Code) (Criminal Procedure Code Of Ukraine, 2012).Certain provisions of the Criminal Procedure Code of Ukraine also indicate the need for the court to take a certain activity in establishing the circumstances of a criminal offense. On the initiative of the court, some investigative (search) actions may be carried out, in particular: interrogation of an expert (Part 1 of Article 356 of the Criminal Procedure Code); examination of documents 160 (Article 358 of the Criminal Procedure Code); on-site inspection (Article 361 of the Criminal Procedure Code); examination in accordance with Part 2 of Art. 332 of the Criminal Procedure Code; repeated interrogation of a witness (Part 13 of Article 352 of the Criminal Procedure Code); simultaneous interrogation (Part 14 of Article 352 of the Criminal Procedure Code) (Criminal Procedure Code Of Ukraine, 2012).

An important group of issues to be decided by the court are those related to the provision and examination of evidence during the trial. We share the point of view of O.V. Lytvyn, who understands the examination of evidence in court as the mental and practical activity of the court regulated by the Criminal Procedure Code with the active participation of participants in the proceedings with the assistance of other participants in criminal proceedings, aimed at establishing the relevance, admissibility, reliability of evidence by analyzing each of them other evidence and obtaining evidence that confirms or denies the relevance, admissibility, reliability of the evidence under investigation (Lytvyn, 2012).

The importance of such a direction of judicial activity as the administration of justice requires the creation of such conditions for the study of the actual circumstances of a criminal offense, which would ensure the adoption of a reasoned court decision. Given the adversarial principle, litigants enjoy equal rights to examine evidence and prove their persuasiveness in court, and the court must create the necessary conditions for litigants to exercise their procedural rights and direct the investigation to ensure that the parties exercise their rights.

As a general rule, the court receives the testimony of participants in criminal proceedings orally. The information contained in testimonies, things and documents which were not a subject of direct research of court, except for the cases provided by Art. 23 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code Of Ukraine, 2012). It is a question of immediacy of research of indications, things, documents as the general principle of criminal proceedings which is defined in item 16 of h. 1 Art. 7 and formulated in Art. 23 of the Criminal Procedure Code of Ukraine.

This principle is important for the full clarification of the circumstances of the criminal proceedings and its objective solution. The immediacy of the perception of evidence allows the court to properly examine and verify them (both each piece of evidence separately and in conjunction with other evidence), to assess them according to the criteria set out in Part 1 of Art. 94 of the Criminal Procedure Code of Ukraine, and to form a complete and objective view of the facts of a particular criminal proceeding. Also in paragraph 18 of the Resolution of the Supreme Court of Ukraine of 21.01.2016 in the case №5-249x16 states that the immediacy of the examination of evidence means addressed to the court requirement of the law to examine all evidence collected in a particular criminal proceeding by questioning accused, victims, witnesses, expert, review of physical evidence, announcement of documents, reproduction of sound and video recording, etc. (Resolution Of The Supreme Court Of Ukraine, 2016).

Determining the limits of the court's participation in the examination of evidence in the trial, we support the position of V.T. Nora that the court in resolving the case - a lawful and reasonable decision - should not remain a passive observer of the legal duel of the parties, monitoring only the observance of its procedure (rules). The court should be able, with the assistance of the parties, but independently of them, to examine the evidence submitted by them by all procedural means, including investigative and judicial actions, which the law makes available to it. (Nor, 2010).

The most common procedural means of examining evidence in criminal proceedings are investigative (search) actions, which, in particular, include interrogation in court. The general procedure and sequence of interrogation, interrogation of witnesses, victims, suspects and accused, features of interrogation of minors of different procedural status, interrogation by video conference, etc., are defined in Art. Art. 351-354, 356 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code Of Ukraine, 2012). Failure to comply with the procedural rules of interrogation is a violation of the law and entails the invalidity of the investigative (search) action and the inadmissibility of the testimony obtained as a source of evidence.

Judicial interrogation is carried out by obtaining testimony in court from persons who have information about the circumstances of the criminal case to be established by the court. And this method is not limited to the

process of voicing the testimony of the interrogated person in court, but its essence is to interrogate the interrogated person, giving him oral testimony (in the form of a free story or answers to questions), perception (hearing) testimony by a subject whether it is situationally determined to conduct the relevant type (stage or phase) of judicial interrogation.

During the trial, the interrogated person may, in the manner prescribed by law, be induced to testify not only by the prosecutor or the court, but also directly by the accused, his defense counsel, the victim and other participants in the trial. The results of the judicial interrogation in the form of testimony form in the court an inner conviction about the investigated event, its circumstances and other issues that are important for the proper resolution of criminal proceedings. N.M. Maksymyshyn emphasizes that during this investigative (search) action there is no need to comment or correct the interrogated, it is necessary to give them the opportunity to speak fully, and then by asking questions to supplement and detail gaps in their testimony and clarify information about the circumstances are essential to the case (Maksymyshyn, 2016).

It should be emphasized that asking supplementary, control questions to the interrogated is the exclusive right of the court and the parties to the criminal proceedings. For example, after interrogation of the victim (direct and cross) with the permission of the presiding victim in the order of priority may ask questions and other participants in criminal proceedings, as well as the presiding judge, other judges (Article 353 of the Criminal Procedure Code of Ukraine). However, to clarify and supplement the answers of the victim, the presiding judge may ask questions throughout the interrogation of the victim (by analogy with Part 1 of Article 351 of the Criminal Procedure Code of Ukraine) (Criminal Procedure Code Of Ukraine, 2012).

After the interrogation of a witness, a victim, an expert by the parties to the criminal proceedings, they may be asked questions by the presiding judge and judges (Part 11 of Article 352, Part 2 of Article 353, Part 2 of Article 356 of the Criminal Procedure Code of Ukraine). The presiding judge also interrogates the accused by the latter, which does not deprive him of the right to ask questions during the entire interrogation by the participants in the proceedings (Part 1 of Article 351 of the Criminal Procedure Code of Ukraine). Such powers of the presiding judge to examine evidence during a court interrogation are much broader than those of other participants.

In our opinion, such an order of interrogation of persons does not create obstacles for the court to take an active position in clarifying the circumstances of the criminal proceedings during the interrogation. We substantiate our position through the prism of the study of the category «activity» and «initiative».

As V.V. Vapnyarchuk emphasizes, it can be argued that the concepts of «activity» and «initiative» are close in meaning but not completely identical. Yes, not every active activity and not in all cases can be proactive. Intense activity is realized in a larger volume and more intensively (more vigorously than usual). For example, the court makes a decision at the request of the investigator, prosecutor (for example, on the application of a certain measure to ensure the proceedings, conducting a separate investigative (search) action). Such activities are intense, but not proactive (Vapnyarchuk, 2014).

Initiative activity is manifested in the fact that it is carried out at its own discretion, at its discretion, is not mandatory for the subject who carries it out, but the element of activity is present in it in connection with the implementation of certain energetic actions. In particular, when taking the initiative, a certain subject is thus active (does, although he could not do, that is, could remain passive). That is, initiative activity is a narrower category, an integral part of the intense activity of the court.

If during the trial there are contradictions between already interrogated participants in criminal proceedings, only the presiding judge has the right to appoint simultaneous interrogation of two or more already interrogated participants in criminal proceedings (witnesses, victims, accused) to determine the reasons for differences in their testimony. rules established by Part 9 of Art. 224 of the Criminal Procedure Code of Ukraine (Part 14 of Article 352, Part 2 of Article 353 of the Criminal Procedure Code of Ukraine) (Criminal Procedure Code Of Ukraine, 2012).

It is worth paying attention to the procedural order for clarifying the circumstances of criminal proceedings in the examination of written and physical evidence determined by the Criminal Procedure Code of Ukraine. Before the examination of material evidence, the presiding judge explains to the participants in the proceedings about their right to draw the court's attention to certain circumstances related to the thing and its inspection, as well as the right to ask questions about physical evidence to witnesses, experts, specialists. inspected. After clarifying the circumstances established during the criminal proceedings and verifying them with evidence, the presiding judge is obliged to find out from the participants in the proceedings whether they wish to supplement the trial and how exactly (Part 1 of Article 363 of the Criminal Procedure Code Of Ukraine) (Criminal Procedure Code Of Ukraine, 2012).

The provisions of the criminal procedure law determine the general rules for determining the authenticity of testimony, things and documents. For example, in order to verify the authenticity of documents, participants in criminal proceedings have the right to: 1) ask questions about documents to witnesses, experts, specialists; 2) ask the court to exclude them from the evidence and decide the case on the basis of other evidence or to appoint

an appropriate examination of this document (parts 2 and 3 of Article 358 of the Criminal Procedure Code of Ukraine) (Criminal Procedure Code Of Ukraine, 2012).

In case of discrepancies between the examined document and other evidence, the court, in order to find out the reasons for these discrepancies, has the right to conduct other procedural actions: mainly, the examination of witnesses and the appointment of an expert examination. As a rule, in case of discrepancies between the document and other evidence, the person who drew up this document is subject to interrogation as a witness. Determining the authenticity of documents, depending on their type, the court also has the right to appoint autographic, handwriting, phototechnical examination, technical examination of documents, examination of video and audio, etc. (Dekhtyar, 2014).In this case, participants in criminal proceedings have the right to ask the expert questions to be included in the court decision on the appointment of examination, except when the answers do not relate to criminal proceedings or are not relevant to the trial (Part 3 of Article 332 procedural code of Ukraine).

We agree with the position of M.I. Shevchuk, that lawful and admissible is also the activity of the court to examine the evidence, which is manifested in its ability to fill in the incompleteness of the study of specific evidence, which is caused by the passivity of the parties in its submission and examination in court, by more careful, comprehensive study of evidence. For example, the court may examine in more detail the objects and documents provided to it by a party or other participants in the proceedings; ask the interrogated witness additional, clarifying questions; consider it necessary to conduct an inspection of the scene; the court at the place of inspection may also ask questions to the participants in the criminal proceedings who take part in it (Shevchuk, 2015).

As rightly noted by O.V. Dekhtyar, in case of replacement of a judge in accordance with Art. 320 of the Criminal Procedure Code of Ukraine, the principle of immediacy is fully implemented, as the reserve judge was present during the direct examination of evidence by the court of first instance. In the case of replacement of a judge under Part 2 of Art. 319 of the Criminal Procedure Code of Ukraine, this principle is limited, because the perception of evidence by a judge who intervenes in the case, is not directly, but by reviewing the course of court proceedings and materials of criminal proceedings. Such conclusions of the scientist concern the replaced judge who before was not in the status of the reserve, and therefore could not personally perceive the circumstances of criminal proceedings investigated during trial. In the event of a replacement of a judge, the substitute judge shall be empowered to verify the affiliation, authenticity and sufficiency of the evidence, to obtain new evidence, thereby ensuring that all the circumstances of the criminal proceedings are clarified. (Dekhtyar, 2014).

It is worth noting the undeniable organizational influence of the chairman, on which Art. 321 of the Criminal Procedure Code of Ukraine entrusts managing the course of the hearing, ensuring compliance with the sequence and procedure of procedural actions, the implementation of participants in criminal proceedings their procedural rights and responsibilities, directing the trial to ensure clarification of all circumstances of criminal proceedings, eliminating it anything that is irrelevant to criminal proceedings.

According to Art. 94 of the Criminal Procedure Code of Ukraine, the court in its internal conviction, which is based on a comprehensive, complete, and impartial examination of all circumstances of criminal proceedings, guided by law, evaluates each piece of evidence in terms of relevance, admissibility, reliability, and the set of evidence - from the standpoint of sufficiency and relationship to make an appropriate procedural decision ... No evidence has a predetermined force (Criminal Procedure Code Of Ukraine, 2012).

Evaluation of evidence is final to address issues arising during the criminal proceedings, and the Criminal Procedure Code of Ukraine provides for the appropriate procedural procedure for participants in criminal proceedings in case of non-compliance of factual data with the criteria of relevance, admissibility, reliability. Evaluation of evidence, unlike verification, is not combined with any practical actions and is a purely mental, logical activity, the purpose of which is to determine the admissibility, relevance, reliability, value (strength) of each piece of evidence and the sufficiency of their totality to establish the circumstances in the subject of proof.

In the process of developing the theory of evidence as one of the directions of the criminal process, different approaches to defining the concept of evaluation of evidence have been outlined. Some proceduralists consider the evaluation of evidence as a statutory activity of subjects of knowledge (Strogovich, 1968). Other scholars understand the evaluation of evidence as a logical mental process, determining the value of the evidence collected to establish the truth (Lupinskaya, 1997). From a philosophical point of view, evaluation as an activity is a subjective relation to the object of cognition (Shinkaruk, 2002). The right authors are those who believe that the evaluation of evidence is not limited to the purely mental work of the subject of knowledge. It has internal (logical) and external (legal) sides (Gromov and Zaitseva, 2002). We believe that the evaluation of evidence can be defined as the statutory practical and mental activity of authorized subjects of criminal proceedings to determine the relevance, admissibility, sufficiency, reliability of evidence and their relationship to make a procedural decision.

One of the most important criteria for evaluating evidence is its admissibility. Inadmissibility of evidence is the antithesis of their admissibility. The inadmissibility of evidence is determined by the following criteria: obtaining evidence by unauthorized entities; obtaining evidence

from an improper source; violation of the procedure for obtaining evidence established by law. Obviously inadmissible evidence is evidence that: obtained by the pre-trial investigation body in a manner not provided by procedural law; received by the body of pre-trial investigation in violation of the procedure provided by procedural law; evidence obtained as a result of a significant violation of human rights and freedoms. In case of obvious inadmissibility of evidence during the trial, the court declares this evidence inadmissible, which entails the impossibility of examining such evidence or terminating its examination in court, if such investigation was initiated (Part 2 of Article 89 of the Criminal Procedure Code of Ukraine) (Criminal Procedure Code Of Ukraine, 2012).

The scientific literature has repeatedly emphasized that the court can never independently initiate the procedure of declaring evidence inadmissible during the trial, arguing that otherwise the principle of adversarial proceedings will be violated. The court must decide on the admissibility of evidence in the sentencing process, determining the reasons for which it declares this or that evidence inadmissible (Criminal Procedure Code of Ukraine, 2012). Scholars also rightly point out that to legislate for the court the right to initiate the procedure of declaring evidence inadmissible during the trial, the court can hypothetically become a hostage of its own activity, namely: the more persistently with its own intentions and initiative it will act during the examination of evidence, it will be more difficult for him to be in the role of an impartial arbitrator in the future when making a final decision in criminal proceedings.

The final assessment of the admissibility of evidence is made by the court in sentencing. According to the Criminal Procedure Code of Ukraine, it is the court that decides the admissibility of evidence during their evaluation in the deliberation room during the court decision (Part 1 of Article 89).

Judicial consideration of criminal proceedings, resolution of petitions filed during the trial by the parties, their substantiation, oral hearing of testimony of the accused, victim, witnesses, announcement of protocols of investigative (search) actions, conclusions of experts, specialists, content of other documents aimed at investigating criminal circumstances form an objective vision of what is done. Such an objective vision contributes to the formation of an inner conviction in the judge.

The law requires that the court consider all the circumstances of the criminal proceedings as a whole and, on that basis, develop its internal conviction to assess the evidence. Only in this case can he develop full conviction that certain factual circumstances have indeed occurred in the past. Yu.M. Groshevyi notes that the judge's inner conviction is a conscious need of the judge, the use of his own thoughts, views and knowledge. It is related to the legal consciousness of the judge, which is seen as a form of social consciousness that combines a system of views, ideas, ideas,

theories, as well as feelings, emotions and experiences. They characterize the attitude of people and social groups (including through actual behavior) to the existing and desired legal system (Groshevyi and Stakhivskyi, 2006).

Having systematized and analyzed the positions of researchers, we can conclude that the inner conviction - an element of mental activity for the study and evaluation of evidence, formed during the criminal case in essence, the judge's idea of how to resolve the dispute.

Therefore, the court remains solely responsible for resolving the issues provided for in Art. 368 of the Criminal Procedure Code (Criminal Procedure Code Of Ukraine, 2012). A conviction cannot be based on assumptions, it is passed only if during the court the guilt of the defendant in committing a criminal offense is proven (Dyakov, 2016).

Conclusions

Thus, the activity of the court to investigate the circumstances of criminal proceedings and their assessment under the laws of Ukraine is a complex practical and mental activity. The evaluation of evidence by the court can be defined as regulated by law its practical and mental activity as a competent subject of criminal proceedings to determine the relevance, admissibility, sufficiency, reliability of evidence and their relationship to make a procedural decision.

The most common procedural means of examining evidence in criminal proceedings are investigative (search) actions. The concept of «examination of evidence» by the court within the criminal procedural law in its essence and content almost coincides with the «assessment of evidence», because as a result of perception of certain procedural sources and mental activity of the judge new knowledge is formed, which allows to form judgments and inferences. At the stage of court proceedings, they are expressed in the form of procedural court decisions with the appropriate reflection in the text of such considerations and conclusions. The difference between these concepts is in the subject composition.

The court assesses the evidence independently, while being personally responsible for the decisions made. Evidence is investigated according to a certain procedure and with the participation of participants in criminal proceedings, who have the right to ask questions, draw the court's attention, make appropriate motions, and so on. That is, the «assessment of evidence» by the court requires personal direct perception of evidence as part of the materials of criminal proceedings by the court (judges), without direct and simultaneous perception of them by other participants in the proceedings. Evaluation of evidence, unlike verification, is not combined

with any practical actions and is a purely mental, logical activity, the purpose of which is to determine the admissibility, relevance, reliability, value (strength) of each piece of evidence and the sufficiency of their totality to establish the circumstances in the subject of proof. The court's assessment of reliability, as well as the assessment of the appropriateness of evidence and their procedural sources is a long process, which ends only at the time of formulating the final conclusions in criminal proceedings on the basis of the totality of evidence collected. The sufficiency of the evidence gathered in the case for a reliable conclusion in the criminal proceedings is determined by the internal conviction of the court.

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