THEORETICAL FOUNDATIONS OF EVIDENCE EVALUATION AND STANDARDIZATION OF PROVING IN CRIMINAL PROCEEDINGS RELATED TO ILLEGAL TRAFFICKING OF FIREARMS OR AMMUNITION IN UKRAINE

Serhii Kozachenko,

postgraduate student of a Open International University of Human Development "Ukraine", Kyiv, Ukraine
ORCID: https://orcid.org/0000–0002–5316–0476
e–mail: kozacenkosergej92@gmail.com

***Abstract**. Based on the analysis of modern scientific approaches to understanding the evaluation of evidence and international standards of proving in criminal proceedings, the author has defined the concept and identified the essence of evidence evaluation and standards of proving in criminal proceedings related to the illegal trafficking of firearms or ammunition in Ukraine. It has been emphasized that the current level of development of the general theory of proving allows us to intensify scientific research in the area of developing the specifics of proving in criminal proceedings in regard to certain types of crimes, in particular, in criminal proceedings related to the illegal trafficking of firearms or ammunition. The author has analyzed regulatory legal framework of evidence evaluation and standardization of proving in regard to proving in criminal proceedings related to illegal trafficking of firearms or ammunition in Ukraine. Methodology. General scientific and special methods of cognition have been applied during the research, in particular such methods of dialectical and formal logic as analysis, synthesis, deduction, induction, comparative, systematic and structural. Results. It has been stated that the theory of criminal procedural proving forms the scientific and regulatory basis of proving as a practical activity of the participants of criminal proceedings both at the level of criminal procedural legislation and at the level of practical recommendations for proving entities. Modern approaches to the scientific understanding of evidence evaluation and standards of proving in criminal proceedings related to illegal trafficking of firearms or ammunition in Ukraine have been analyzed. International sources of the specified components and their level of legislative regulation (formalization) at the national level have been highlighted. It has been emphasized that evidence evaluation in criminal proceedings related to illegal trafficking of firearms or ammunition in Ukraine should be carried out by using the standards of proving of "reasonable suspicion", "sufficient basis", "beyond a reasonable doubt".*

***Key words**: criminal procedural proving, evaluation of evidence, standards of proving, illegal trafficking of firearms or ammunition.*

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1. Introduction

Provisions of the theory of evidence, which forms the scientific and regulatory basis of such activity are the fundamentals of proving as a practical activity of the participants in criminal proceedings, while a significant part of them is implemented at the level of criminal procedural legislation (law of evidence), another – at the level of practical recommendations for proving entities – an investigator, an interrogator, a prosecutor, an investigating judge, a judge, a defence attorney, an expert, etc. (forensic, technical, tactical and methodical recommendations). Therefore, one should refer to the main provisions of the theory of evidence in order to outline legal principles of proving for any category of crimes (including those related to the illegal trafficking of firearms or ammunition): the concept of proving, its subject matter and limits, the components of proving as a procedure, concepts of evidence and their properties, existing standards of criminal procedural proving, etc. At the same time, the provisions of the specialized legislation, which also requires further analysis, constitute the legal basis for criminal procedural proving in criminal proceedings related to the illegal trafficking of firearms or ammunition, along with the general theoretical provisions.

2. Research methodology

The author has used a spectrum of both general scientific and special methods of cognition during the research, in particular, methods of dialectical and formal logic: analysis, synthesis, deduction, induction, comparative, as well as systematic and structural methods.

3. Results

Proving during criminal proceedings is a component of criminal procedural cognition, the latter is defined as the unity of cognitive, practical and mental activity of criminal proceedings entities, which is carried out according to the general laws of epistemology in the form of legal relations in order to obtain knowledge that can be used as the basis for the adoption of relevant procedural decisions aimed at

solving the tasks of criminal proceedings provided for in the Art. 2 of the Criminal Procedural Code of Ukraine [1, pp. 13-20].

It is typical to say in professional literature that proving in criminal proceedings is an activity that consists of collecting, verifying and evaluating evidence. The indicated approach to the definition of criminal procedural proving and its constituent elements was also reflected in the current Criminal Procedural Code of Ukraine. Thus, proving according to Part 2 of the Art. 91 of the Criminal Procedural Code of Ukraine consists of the collection, verification and evaluation of evidence in order to establish the circumstances that are important for criminal proceedings [2].

Factual data obtained during criminal proceedings and their sources are subject to mandatory verification. It should be noted that the Criminal Procedural Code of Ukraine does not provide the procedure for verifying evidence in criminal proceedings. It is noted in the scientific literature that verification of factual data and their sources is carried out by analyzing them, comparing them with other evidence, which may lead to the conclusion on the need to obtain new evidence that confirms or refutes that was the object of verification. Verification of evidence in criminal proceedings is carried out with the aim of clarifying the issue of their propriety, admissibility, reliability and sufficiency. The logical way to verify the evidence is to analyze and study the content as each piece of evidence separately, as well as to compare with other received evidence [1, p. 22–23].

The procedure for evaluating evidence is defined by the Art. 94 of the Criminal Procedural Code of Ukraine. Thus, in accordance with the specified Article, an investigator, a prosecutor, an investigating judge, court within their internal conviction, which is based on a comprehensive, complete and impartial study of all the circumstances of criminal proceedings, guided by the law, evaluate each piece of evidence from the point of view of propriety, admissibility, credibility, and the totality of the collected evidence – from the point of view of sufficiency and interrelationship for making the appropriate procedural decision. No evidence has a predetermined force [2].

The evaluation of evidence in the professional literature is defined as the mental activity of criminal proceedings entities carried out in logical forms, which consists of the fact that they, guided by the law, consider each piece of evidence separately and the entire set of evidence according to their inner conviction, determining their propriety, admissibility and credibility; put forward necessary investigative (judicial) leads, decide whether they are confirmed, determine whether there are grounds for making procedural decisions and conducting investigative (judicial) actions; make a conclusion on the proven or unproven nature of certain circumstances of criminal proceedings citing the analysis of evidence in the relevant procedural decisions. The indicated activity takes place continuously, throughout the entire process of proving, in particular during the collection and verification of evidence, and determines the formation of conclusions about the proven (or unproven) circumstances that are the subject matter of proving in the case [3, pp. 87-88].

The evaluation of evidence is organically combined with their verification and takes place in the classical direction of analysis and synthesis. First, the content of evidence and the sources are analyzed separately, which is aimed at establishing the consistency and inconsistency of each piece of evidence with other pieces of evidence, improving the understanding about the circumstances of the investigated event, observing the need to obtain new evidence, and the independent analysis of the evidence sources allows us to reveal their legality, completeness and objectivity. Favorable results of the analysis of evidence and the sources open the way for their synthesis – verification in totality, detection of contradictions and probabilities, completeness, logical relationship [4, p. 28].

Assessment of factual data and the sources is primarily carried out for their appropriateness. The Criminal Procedural Code of Ukraine established at the legislative level the rules for evaluating evidence for propriety. In particular, the Art. 85 of the Criminal Procedural Code of Ukraine provides that evidence that directly or indirectly confirms the existence or absence of circumstances subject to proving in criminal proceedings and other circumstances that are important for criminal proceedings, as well as the reliability or unreliability, the possibility or impossibility of using other evidence, is appropriate [2].

Regarding the legal doctrine, the appropriateness of evidence is understood as such an intrinsic property, as a result of which they are able to establish the circumstances necessary for a complete and correct resolution of criminal proceedings [5, pp. 131–139].

According to R.V. Maliuha, the resolution of the issue on the propriety of the evidence is based on the provisions of the legislation on the one hand, in particular, the Articles 85, 91 of the Criminal Procedural Code of Ukraine, and on the other hand – on the personal perception of the subject of proving, which is based on his / her perception of the logical relationship of the factual data that make up the content of evidence and the circumstances to be proved in criminal proceedings provided by the Art. 91 of the Criminal Procedural Code of Ukraine. Thus, those evidences in criminal proceedings (factual data and the sources) are appropriate that confirm both the presence and absence of an alleged relationship between the evidence and the circumstances subject to proving in criminal proceedings or other circumstances that are relevant to criminal proceedings. Evidence recognized as inappropriate is not subject to further verification and evaluation, and its other properties (admissibility, reliability or sufficiency) are not determined [1, p. 27].

After the relevant factual data and the sources (evidence) have been evaluated for their appropriateness, they are subject to further evaluation for their admissibility. Evidence in accordance with Part 1 of the Art. 86 of the Criminal Procedural Code of Ukraine is considered admissible, if it is obtained in the manner established by this Code. Inadmissible evidence cannot be used while making procedural decisions, the court cannot refer to it when passing a court decision [2].

O.S. Stepanov offers to consider the criteria that determine the admissibility of evidence as follows: the evidence must be obtained in the manner prescribed by the criminal procedural legislation of Ukraine; evidence must be obtained by a competent official authorized to conduct procedural actions in a specific case; evidence in the case must be obtained from the sources specified in Part 2 of the Art. 65 of the Criminal Procedural Code of Ukraine; all conditions of the law must be observed while recording the conduction and results of the investigative action; information should not contain guesses and assumptions, but actual data: information about the facts and circumstances that are subject to proving in a specific criminal case [5, p. 8].

The Constitutional Court of Ukraine noted in its decision on the constitutional submission of the Security Service of Ukraine regarding the official interpretation of Part 3 of the Art. 62 of the Constitution of Ukraine No. 12-rp/2011 dated from October 20, 2011 that the accusation of committing a crime cannot be substantiated by factual data obtained in an illegal way, namely: in violation of the constitutional rights and freedoms of a person and a citizen (except in cases of the possibility of restrictions, provided for by the Basic Law of Ukraine), in violation of the procedure, means, sources of obtaining factual data established by law, as well as by an unauthorized person, etc. Collection, verification and evaluation of evidence is possible only in the manner prescribed by law. Only factual data obtained in accordance with the requirements of criminal procedural legislation can be recognized as admissible and can be used as evidence in a criminal case. Verification of evidence for the admissibility is the most important guarantee of ensuring the rights and freedoms of a person and a citizen in criminal proceedings and making a legal and fair decision in the case [6].

Reliability, as defined by D.B. Sergeeva, is primarily characterized by factual data, which is the content of the evidence. If factual data does not possess the property of reliability, then they together with the procedural source cannot form an evidence in criminal proceedings. There is no unreliable evidence in criminal proceedings, because unreliable factual data cannot constitute the content of an evidence, form an evidence. However, if the factual data (and their sources) meet the criteria of reliability (as well as propriety and admissibility), then we can also talk about the same properties of an evidence that it has [7, p. 90].

The concept and essence of the sufficiency of evidence is not defined in the norms of the criminal procedural law. It is only about the duty of an investigator, a prosecutor, an investigating judge, court to establish the sufficiency of the evidence at the time of the adoption of the relevant procedural decision (Part 1, the Art. 94 of the Criminal Procedural Code of Ukraine). The sufficiency of the evidence according to the doctrinal definition presupposes the presence of a set of evidence in criminal proceedings that causes the subject of proving to have an inner conviction in the reliable establishment of the circumstances that are important for criminal proceedings [8, p. 72].

Sufficiency of evidence in criminal proceedings according to M.M. Stoianov is a requirement that is expressed in the presence of such a system of proper, admissible, reliable evidence and obtained as a result of a comprehensive, complete and objective investigation of the circumstances of the criminal case and the entire set of collected evidence, and which reliably establishes all circumstances forming the subject matter of proving [9, p. 60].

Evaluation of evidence is inextricably related to the standards of proving. B.P. Ratushna defines the standard of proving as a certain conditional limit, beyond which the quantitative characteristic of the knowledge obtained by the subject of proving transfers into such quality that gives reasons to the subject of proving to make a true and fair, in his opinion, decision [10, p. 284]. In turn, X.R. Sliusarchuk defines the standard of proving as the level of conviction of the subject of proving, which is the result of evaluating the evidence and whose presence is necessary for the adoption of an initial, intermediate or final procedural decision in criminal proceedings [11, p. 226]. A.S. Stepanenko believes that the standard of proving is a certain criterion (limit) of decision-making for the subject of taking a decision, through the establishment of a certain measure, degree of proving (conviction/confidence of the subject of decision-making), reaching which the fact is considered established [12, pp. 18-19].

Standards of proving as noted by G.R. Kret are generally mandatory for the subjects of criminal procedural proving. The universality of the standards of proving defined by the Criminal Procedural Code of Ukraine is based on their regulatory establishment, and the standards of proving formed by the Supreme Court are based on the norms of Parts 5 and 6 of the Art. 13 of the Law of Ukraine "On the Judiciary and the Status of Judges" dated from June 2, 2016 No. 1402–VIII, according to which: 1) conclusions on the application of the norms of law, set forth in the Supreme Court's rulings, are binding for all subjects of authoritative powers, who apply a regulatory legal act containing the relevant norm of law in their activity; 2) conclusions regarding the application of the norms of law, set forth in the Supreme Court rulings, are taken into account by other courts, when applying such norms of law [13, pp. 94–95].

The standard of proving of "reasonable suspicion" is based on the provision of subclause "c" of p. 1 of the Art. 5 of the Convention on the Protection of Human Rights and Fundamental Freedoms dated from November 4, 1950, according to which one of the ways of restricting a person's right to freedom and personal integrity is the lawful arrest or detention carried out with the aim of bringing him to a competent judicial agency, if there is a reasonable suspicion in the commission of an offense or if it is reasonably considered necessary to prevent the commission of an offense or the escape after its commission [14]. The standard of "reasonable suspicion" was used for the first time in the practice of the ECHR in the decision dated from August 30, 1990 in the case "Fox, Campbell and Hartley v. the United Kingdom", where it was stated that the "reasonableness" of the suspicion, which should be the basis for the arrest, forms an essential part of the guarantee against arbitrary arrest and detention, which is set forth in subclause "c" of p. 1 of the Art. 5 of the Convention [15, § 32].

The ECHR in prospect indicates that the existence of reasonable suspicion is necessary when deciding the legality of continued imprisonment [16, § 153], the lawfulness of continued detention [17, § 40], the legality of extending the term of detention [18, § 73], and the belief in the validity of the suspicion that the person taken into custody has committed a crime is an indispensable condition for the legality of continued detention and its proper criterion [19, §§ 114, 116].

Reasonable suspicion is defined in science as an assumption about the involvement of a person into the commission of a criminal offense, based on the evidence available in criminal proceedings and formed at the necessary level for the adoption of a corresponding procedural decision [13, p. 324].

Reasonable suspicion is currently used in criminal procedural legislation as a necessary condition for: 1) making a decision on the application of measures to ensure criminal proceedings (p. 1, Part 3 of the Art. 132); 2) taking a number of procedural actions by the authorized official who carried out the detention, the investigator, the investigating judge, aimed at ensuring the rights of the detained person (Parts 2, 6 and 7 of the Art. 206, Part 3 of the Art. 210, Part 1 of the Art. 213); 3) the prosecutor's appeal to the investigating judge with a request for the permission to monitor bank accounts as a secret investigative (search) action (Part 1 of the Art. 269-1); 4) reporting of a suspicion (Part 1 of the Art. 276) [2].

The standard of proving of "sufficient basis" is based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms dated from November 4, 1950, which allow establishing the right of every arrested and detained person to appear immediately before a judge or another official authorized by law to exercise judicial power, with ensuring that the case is considered by the court within a reasonable time or released during proceedings (p. 3 of the Art. 5) and to recognize the arrest or detention of a person as legal, if there is a well-founded belief in the need to prevent him from committing an offense or his escape after it has been committed (subclause "c" of p. 1 of the Art. 5) [14]

The standard of proving of "sufficient basis" in criminal proceedings of Ukraine is based on the requirement of legality, according to which the form and content of any procedural decision, which is adopted during criminal proceedings, must strictly comply with the norms of the law [13, p. 349].

The term of "sufficient basis" in the Criminal Procedural Code of Ukraine is used by the legislator as a necessary condition for the: 1) adoption of a decision by an investigator, a prosecutor to refuse recognition as a victim on the grounds provided by Part 5 of the Art. 55 of the Criminal Procedural Code of Ukraine; 2) adoption of a decision by an investigator, a prosecutor, an investigating judge, court, within the limits of their competence, on the application of measures to ensure criminal proceedings (Part 2 of the Art. 133, Part 1 of the Art. 134, Part 1 of the Art. 148, Part 1 of the Art. 152 , Part 1 of the Art. 157, Parts 1, 2, 5 and 7 of the Art. 163, Part 2 of the Art. 167, Parts 3-5 of the Art. 170, Part 2 of the Art. 177, Part 4 of the Art. 189, p. 2 of Part 2 of the Art. 194 of the Criminal Procedural Code of Ukraine); 3) adoption of a decision by a prosecutor to combine the materials of pre-trial investigations on the grounds specified in Part 1 of the Art. 217 of the Criminal Procedural Code of Ukraine; 4) adoption of a decision by an investigating judge on permission to conduct a search (Part 5 of the Art. 234 of the Criminal Procedural Code of Ukraine), and during its implementation – adoption a decision by an investigator, a prosecutor to conduct a search of persons who are in housing or other possessions (Part 5 of the Art. 236 of the Criminal Procedural Code of Ukraine); 5) adoption of a decision by an investigator, a prosecutor, an investigative judge within their competence on granting a permit to conduct secret investigative (search) actions (Part 3 of the Art. 248, Part 4 of the Art. 258, Part 1 of the Art. 260, Part 2 of the Art. 261 and Part 1 of the Art. 271 of the Criminal Procedural Code of Ukraine); 6) adoption of a decision by an investigating judge on the possibility of using information obtained as a result of secret investigative (search) action in other criminal proceedings (Part 1 of the Art. 257 of the Criminal Procedural Code of Ukraine); 7) adoption of a decision by a prosecutor, an investigating judge within their competence to extend the period of pre-trial investigation (Part 8 of the Art. 295 and Part 5 of the Art. 295-1 of the Criminal Procedural Code of Ukraine); 8) adoption of a decision to conduct an examination by the court in cases provided by p. 3, Part 2 of the Art. 332 of the Criminal Procedural Code of Ukraine; 9) adoption of a decision by an investigator, a prosecutor, an investigative judge within their competence to conduct procedural actions in the mode of a video conference on the grounds provided by p. 5, Part 1 of the Art. 232 and p. 5, Part 1 of the Art. 336 of the Criminal Procedural Code of Ukraine; 10) adoption

of a decision by an investigating judge, court in criminal proceedings, regarding the application of coercive measures of an educational nature, on the placement of a person at the reception centre for children provided by the Art. 498 of the Criminal Procedural Code of Ukraine (Part 4 of the Art. 499 of the Criminal Procedural Code of Ukraine); 11) adoption of a decision by an investigator, a prosecutor to conduct criminal proceedings regarding the application of coercive measures of a medical nature provided by the law of Ukraine on criminal liability (Part 1 of the Art. 503 of the Criminal Procedural Code of Ukraine); 12) adoption of a decision by an authorized (central) agency of Ukraine on refusal to fulfill a request on international legal assistance on the grounds provided by p. 5, Part 2 of the Art. 557 of the Criminal Procedural Code of Ukraine; 13) execution of a notification of suspicion in criminal proceedings by a prosecutor, an investigator upon prosecutor's coordinated approvals, adopted from another state (Part 4 of the Art. 598 of the Criminal Procedural Code of Ukraine) [2].

The standard of proving of "beyond a reasonable doubt" found its consolidation in the practice of international judicial institutions. In particular, paragraph 3 of the Art. 66 of the Rome Statute provides that in order to convict the accused, the Court must be convinced that the accused is guilty of committing a crime and this cannot be doubted on reasonable grounds [20]. This standard of proving is mentioned in the Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia, adopted on February 11, 1994, almost in the same way as in paragraph 3 of the Art. 66 of the Rome Statute. In particular, the Rule 87(A) provides that a person's guilt can be established only if the majority of the Trial Chamber is convinced that the guilt is proven beyond a reasonable doubt [21, p. 89].

The standard of proving of "beyond a reasonable doubt", by the definition of G.R. Kret, is a regulatory established rule that reflects the level of reliability of knowledge about the circumstances of criminal proceedings, which must be achieved by the subject of proving on the basis of a sufficient set of proper, admissible and reliable evidence to make a procedural decision to declare the accused guilty/not guilty of a criminal offense [13, p. 379]. That level of reliability of knowledge about the circumstances of criminal proceedings can be achieved solely due to the reasonableness of the doubt, which is characterized by reasonableness and cogency [11, p. 15].

The standard of proving of "beyond a reasonable doubt" was legally defined at the national level in the Criminal Procedural Code of Ukraine of 2012. Thus, in accordance with Part 2 of the Art. 17 of the Criminal Procedural Code of Ukraine, no one is obliged to prove his / her innocence in committing a criminal offense and must be acquitted, if the prosecution does not prove the guilt of a person beyond a reasonable doubt [2].

4. Conclusion

Summarizing the above, it should be stated that the current state of development of the theory of proving in criminal proceedings allows scholars to concentrate their works on studying the problems of proving certain types of crimes, where the specified provisions will form the theoretical and regulatory basis for such research, in particular, in relation to proving in criminal proceedings related to the illegal trafficking of firearms or ammunition. Proving within the specified category of criminal proceedings involves, among other things, the evaluation of evidence for their appropriateness, admissibility, credibility and sufficiency. At the same time, the evaluation of evidence during criminal proceedings related to illegal trafficking of firearms or ammunition in Ukraine requires the compliance with such standards of proving as "reasonable suspicion", "sufficient basis", "beyond a reasonable doubt".

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