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The Procedure for Pre-Trial Examination of Evidence in The Anglo-Saxon Legal System and Its Significance for National Legislation

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Abstract: The article provides a comparative legal analysis of the experience of the states of the Anglo-Saxon legal system — the United States, England and Wales, Canada, Australia and New Zealand — in the examination of evidence in pre-trial proceedings. The criterion of comparison is not the presence of the term in the law, but the legal function of the rule in re-testing evidence. Proposals are formulated on the equal coverage of reasonable lines of enquiry, the registration of case materials and the documentation of the result of examination.

Keywords: Examination of evidence, pre-trial proceedings, reasonable line of enquiry, disclosure, authentication, electronic evidence, comparative legal analysis.

Introduction: The study of advanced foreign experience is of pressing importance for improving the procedure for examining evidence in pre-trial proceedings: an analysis of the means of establishing the reliability of evidence and of the manner in which the result of examination is formalised serves to increase the effectiveness of existing mechanisms.

Under Article 85 of the Criminal Procedure Code of the Republic of Uzbekistan, proof consists of the collection, examination and evaluation of evidence. Article 94 provides that a decision in a case may be based only on evidence examined scrupulously, fully, comprehensively and objectively, examination being carried out by collecting additional evidence confirming or refuting the evidence under examination [1]. Examination is thus defined as an independent part of proof, yet the algorithm for performing it — which act is to be carried out in respect of which doubt, and in which procedural document the result is to be reflected — remains undisclosed.

In the Anglo-Saxon legal system there is generally no single general rule entitled “examination of evidence”, as there is in the CIS states. Its functions are nevertheless performed through the full identification and disclosure of investigative material, the duty to produce exculpatory information, the authentication of evidence and the opportunity given to the defence to inspect the case materials. These mechanisms are therefore studied as functional solutions strengthening the external-control and documentation functions of examination.

LITERATURE REVIEW AND METHODOLOGY

As A. Kh. Saidov observes, comparative legal research helps to identify the factors that have proved themselves abroad while at the same time making it possible to take account of the negative aspects of foreign experience [2]. This view shows that a foreign rule must be approached not as a ready-made template but from the standpoint of its practical result and its capacity to be adapted to the national system.

Sh. A. Kulmatov notes the value of using the achievements of foreign legislation in improving national law [3]. Supporting this approach, we consider it appropriate to analyse foreign experience not merely through the text of the rules, but within the functional relations between the investigator, the prosecutor, defence counsel and the court. In the view of S. N. Gordeev, a scientifically grounded analysis of foreign experience helps to identify the strengths and weaknesses of the national system [4] — which allows the gap noted above to be assessed functionally.

M. K. Nazhimov and F. P. Hayitboev divide contemporary legal systems into the Romano-Germanic, common (Anglo-Saxon), Scandinavian and other legal families [5]. The comparative study edited by S. P. Shcherba shows that a procedural institution cannot be transplanted mechanically in isolation from another state's system, and that each rule must be assessed together with its legal environment and the powers of the participants [6].

Generalising these views, we conclude that two conditions govern the study of foreign experience: the rule under study must serve the task of examining evidence rather than that of collecting or evaluating it, and any positive solution must be recommended in a form adapted to the powers of the participants in national proceedings and to the structure of procedural documents. The limits of the analysis were also defined: the rules studied are those serving to establish the content, source and procedural form of evidence examined before trial, and the circumstances confirming or refuting it. Comparative legal, formal-legal and systemic methods of analysis were used.

RESULTS

The United States. The basic procedure for the mutual pre-trial disclosure of case materials is laid down in Rule 16 of the Federal Rules of Criminal Procedure: the prosecution produces the defendant's statements, documents and objects, the results of examinations and the report of an expert witness [7]. This mechanism makes it possible to systematise the information gathered in the investigation and to compare it with the arguments of the defence.

Section 9-5.001 of the Justice Manual establishes the policy of the timely disclosure by federal prosecutors of information negating guilt or affecting the credibility of a prosecution witness [8]: the prosecutor must identify and take into account not only material supporting the charge but also information contradicting it.

Rule 901 of the Federal Rules of Evidence provides that, to authenticate an item of evidence, the proponent must produce sufficient information showing that the item is what it is claimed to be, and names as examples the personal knowledge of a witness, the distinctive characteristics of the object and the production of an accurate result by a process or system [9]. This corresponds to the verification of the source, the process of creation and the metadata of digital evidence. In our view, the most important feature of this experience is that examination ceases to be the investigator's internal reasoning and becomes a documented process capable of being re-checked by defence counsel, the prosecutor and the court.

England and Wales. The Code of Practice adopted under the Criminal Procedure and Investigations Act 1996 requires the investigator to pursue all reasonable lines of enquiry, whether they point towards or away from the suspect [10]. The Disclosure Manual of the Crown Prosecution Service states that a reasonable line of enquiry is determined by the facts of the case, the issues in dispute and the arguments raised by the defence, and must be necessary and proportionate [11]. Such an approach does not compel the investigator to test every theoretical possibility, but does not permit a specific argument capable of affecting the outcome to be set aside without reason.

The PEACE model used in interviewing consists of the stages of planning and preparation, engagement and explanation, obtaining the person's free account, closure and evaluation [12]. Its final stage involves comparing the information obtained with the other material in the case, identifying gaps and contradictions and setting further verification tasks — the model thus serves not only to obtain a statement but also to examine it subsequently. The value of these rules lies in the fact that their performance can later be checked: if a line of enquiry is not recorded in the investigation plan, it cannot be established who set it aside and why.

Canada. Under the Deskbook of the Public Prosecution Service, the prosecution must produce the relevant material in the case irrespective of whether it supports the charge or assists the defence [13]. The analysis of the Department of Justice shows that where the police fail to identify the material fully and transmit it to the prosecutor, the subsequent disclosure is defective [14]. It follows that the prosecutor's verification activity cannot be confined to reading the indictment: the subject of supervision must also include the full volume of material, which part of it was left out of the indictment and the grounds for that exclusion.

Australia. In the Statement on Disclosure adopted by the Commonwealth Director of Public Prosecutions in 2024, disclosure is understood not as an act performed once but as a continuing obligation updated as new material emerges [15]. The Prosecution Policy of the Commonwealth likewise directs the prosecutor to assess whether sufficient and reliable evidence exists and to take account of contradictions and weaknesses in the material [16]. Such an approach turns prosecutorial supervision into a means of testing the stability of the body of evidence.

New Zealand. The Criminal Disclosure Act 2008 establishes the stages of initial and full disclosure, the grounds for withholding certain information and the duty to produce material that emerges later [17]. This model opens examination to external control through the inspection of the case materials by the defence: counsel may point to a contradiction in a statement, a document or digital data and request further verification. As a result the conclusion of the investigating body is tested not only within the agency but in the argument between the parties.

DISCUSSION

The practical significance of the experience examined may be generalised in five directions. First, the investigation covers equally the reasonable lines confirming and refuting the suspicion (England and Wales). Second, the result of an interview is treated as the starting material for further examination (the PEACE model). Third, the registration of all relevant material and its transmission to the prosecutor secures the completeness of examination (Canada, Australia). Fourth, the authentication of an electronic object is defined as an independent verification task (the United States). Fifth, examination is not a single completed act: when new material is received, earlier conclusions are revisited (Australia, New Zealand).

A comparison of these directions with the national system shows that Article 94 of the Code defines the purpose of examination but does not provide for an externally verifiable form of performing it: the documents do not reflect which reasonable lines the investigator pursued or which material remained outside the indictment. It is precisely here that the value of the Anglo-Saxon experience lies. At the same time, these mechanisms took shape in an environment based on the equal argument of the parties, and should therefore be recommended in a form adapted to the existing powers of the investigator and the prosecutor.

CONCLUSION

On the basis of the analysis carried out, we advance the following proposals for national practice.

First, the Code should fix the investigator's duty to examine equally the reasonable lines of enquiry confirming and refuting the suspicion, and the act performed along each line, together with the result obtained, should be recorded in the investigation plan and in the documents of prosecutorial supervision.

Second, an electronic register of case materials should be introduced between the investigator and the prosecutor, showing the source of each item, its significance within the body of evidence, whether it was included in the indictment and the grounds for any exclusion. It would also be appropriate to provide a mechanism automatically prompting the revision of earlier conclusions when new evidence is received.

Third, the authentication of electronic evidence should be defined as a separate verification task: the reliability of the device, the history of the data and the indicator confirming integrity should be established technically and recorded in a procedural document. The introduction of these proposals would turn examination into an independent and substantively defined element of proof and would help to form, already at the pre-trial stage, a factual basis sufficient for evaluating the reliability of evidence.

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