

Issues of improving the admissibility of evidence in criminal proceedings

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Abstract: This article analyzes the admissibility of evidence in criminal proceedings. The norms of the Criminal Procedure Code of the Republic of Uzbekistan on the admissibility of evidence are analyzed. Based on the results of the analysis and research, the author's substantiated proposals and recommendations were elaborated.

Keywords: Crime, evidence, admissibility, evidence collection, examining evidence, evaluating evidence, proving.

Introduction: The issue of improving the admissibility of evidence in criminal proceedings is directly related to improving the sources of regulatory legislation that determine when this evidence is considered admissible, and simultaneously with the development of proposals and recommendations aimed at eliminating the violations committed. of the law, committed by subjects of proof in the practice of judicial investigation. During the collection and examination of evidence in criminal proceedings, persons authorized to do so may make various mistakes and shortcomings.

V.S. Balakshin rightly noted that any violation of the criminal procedure law cannot be grounds for recognizing evidence as inadmissible. The grounds for recognizing evidence as inadmissible should be, firstly, violations committed during the collection of evidence, and secondly, violations that cause insurmountable doubts about the reliability and (or) relativity of evidence from information or the presumption arising from them during the study and assessment of the totality of evidence.

Such violations that make evidence inadmissible have been studied by a number of experts in this field, who have tried to develop various classifications of these violations.

In particular, N.V. Kostovskaya divided violations leading to the recognition of evidence as inadmissible into violations that do not affect the outcome of the case and those that affect the outcome of the case,

justifying the conclusion that

“a significant violation affecting the outcome of the case” covers the following three forms:

a significant violation of the criminal procedure law;

a significant violation of the criminal law;

a significant violation of the substantive law on civil consequences arising from the committed act.

Although this opinion of N.V. Kostovskaya is not erroneous, one should not forget that it has a general meaning, and in particular, a significant violation of the criminal procedure law covers the entire process.

In addition, it should be noted that the inclusion of a significant violation of the requirements of the criminal law and substantive law on civil consequences in the number of violations leading to the recognition of evidence as inadmissible is somewhat beyond the scope of the subject of criminal procedure science.

It should be noted that although N.V. Kostovskaya developed this proposal taking into account the specifics of Russian criminal procedure legislation, it is noteworthy that she also separately classified a material violation of the criminal law, and in this case, in our criminal procedure legislation, it can be noted that such provisions are taken into account (Article 88 of the CPC).

Unlike N.V. Kostovskaya, I.V. Abrosimov proposes to classify violations that determine the inadmissibility of evidence as follows: the timing of the investigative action, its appointment and conduct in accordance with

the procedural procedure; its composition of participants; violation of the requirements of the criminal procedure law regulating the procedure for collecting, securing and examining evidence. These violations can be general for all investigative actions and specific for individual investigative actions, as well as correctable and incorrigible, specific and ambiguous.

One can partially agree with the proposal of I.V. Abrosimov on violations of the law that entail the inadmissibility of evidence, this classification is more related to the violation of the requirements of the criminal procedure law, which regulates the procedure for collecting, securing and verifying evidence during the trial. preparation for the production of investigative actions and their implementation.

It should be noted here that, as O.Ya. Mamedov rightly noted, the phrase "other evidence obtained in violation of the requirements of this Code" in the Criminal Procedure Law cannot provide for all violations of procedural forms that affect the recognition. of collected evidence as inadmissible. Because there can be many such violations in different types and forms, and they can be observed at any stage of the criminal process.

An opinion close to the opinion of O.Ya. Mamedov was also expressed by E.A. Karyakin, who, considering it impossible to establish restrictions on the list of evidence collected in violation of the requirements of the Criminal Procedure Code, provided a more detailed open list, which In view of the majority of types of violations of the law, evidence was collected in the following ways:

- 1) using coercion, threats, deception or other illegal actions;
- 2) as a result of an error by a person participating in the trial, caused by
a failure to explain to him his rights and obligations, an incomplete explanation or an incorrect explanation;
- 3) as a result of receiving information from an unknown source or from
a source that cannot be established in court;
- 4) due to the participation of a person who should be refused investigation;
- 5) as a result of the investigative action being carried out by a person who does not have the right to initiate this criminal case;
- 6) due to another significant violation of the procedure for carrying out an investigative action.

V.S. Balakshin recommended dividing (differentiating) violations of the criminal procedure law that are grounds for recognizing evidence as inadmissible:

a) unconditionally recognized, that is, without additional conditions, which

leads to recognizing the evidence as inadmissible;

b) conditionally evaluative, that is, even if they have a conditionally consistent connection with the reliability of the evidence, in themselves they do not cause doubts in the subjects of the assessment about the inadmissibility of the evidence or its reliability or relativity, as well as violations that can conclude about the admissibility of evidence only on the basis of the results of the study and assessment of these doubts.

One can fully agree with the classification of V.S. Balakshin violations of the criminal procedure law, which are the basis for recognizing evidence as inadmissible. However, this classification seems more general, since all evidence collected in a criminal case is considered acceptable or inadmissible depending on the results of its examination and assessment.

Here we consider it permissible to recall the arguments of V. I. Tolmosov against the concept of "cruel exclusion" of evidence obtained in violation of the law.

According to the content of these arguments, if the collected evidence is insignificant, that is, if it is possible to eliminate these violations, it is necessary to pay attention to the implementation of actions aimed at preventing the loss or distortion of the collected information.

In our opinion, violations of the requirements of the criminal procedure law, leading to the recognition of the collected evidence as inadmissible, should be classified as follows:

- 1) violations of the requirements established by the Criminal Procedure Code regarding the composition and procedural status of persons participating in investigative actions, judicial actions and operational-search activities;
- 2) serious violations of the procedure established by law for investigation, court actions and operational-search activities carried out for the purpose of collecting real information;
- 3) violations of the procedure for procedural registration of the results of investigations, court actions and operational-search activities;
- 4) Violations of the requirements of the CPC regulating the collection of real data, their procedural registration and verification;
- 5) violation of the procedure for initiating a criminal case, combining criminal cases, separating them into separate cases, terminating inquiry and investigation and restoring them.

In our opinion, the subjects of proof are obliged to

strictly observe the following conditions for recognizing evidence as admissible in Part 3 of Article 95 of the Criminal Procedure Code in order to prevent similar violations in the future:

- 1) collecting evidence in the manner prescribed by law (Article 87 of the Criminal Procedure Code);
- 2) taking measures to protect the rights and legitimate interests of individuals and legal entities in the process of collecting evidence and verification (Article 88 of the Criminal Procedure Code);
- 3) ensuring that evidence is entered into the minutes of the investigative or court hearing (Article 90 of the Criminal Procedure Code) and that this document is signed by the participants and persons authorized to conduct the process (Article 92 of the Criminal Procedure Code);
- 4) in cases of refusal to sign the protocol or the impossibility of signing it, take measures to confirm this provision in the prescribed manner (Article 93 of the Criminal Procedure Code);
- 5) rely only on thoroughly, fully, comprehensively and objectively examined evidence when making a decision on the case (Article 94 of the Criminal Procedure Code).

It should be said that, according to the requirements established by Article 95-1 of the Criminal Procedure Code, if factual information:

by illegal methods or by depriving participants in criminal proceedings of rights guaranteed by law, or by limiting these rights;

if they are obtained in violation of the requirements of this Code, they are considered inadmissible as evidence.

The legislator lists the following 6 violations when he says "obtained in violation of the requirements of this Code":

- 1) the use of torture and other cruel, inhuman or degrading treatment or punishment against participants in criminal proceedings or their close relatives;
- 2) by falsifying (forging) them;
- 3) in violation of the rights of a suspect, accused or defendant to defense, as well as the right to use the services of an interpreter;
- 4) as a result of a procedural action in a criminal case by a person who does not have the right to conduct the said criminal case;
- 5) from an unknown source or from a source that cannot be established during criminal proceedings;
- 6) if they are taken from the testimony of a victim, witness, suspect, accused, defendant during an inquiry,

preliminary investigation, which is not confirmed by a totality of evidence in court, they are considered inadmissible as evidence.

It should be noted that the list of reasons for recognizing the data collected in the CPC as inadmissible as evidence is not complete and contains some gaps.

In particular, in Article 95-1 of the Criminal Procedure Code, the issue of circumstances that prevent participation in criminal proceedings was left outside the attention of the legislator.

In addition, in the CPC "Circumstances that prevent participation in criminal proceedings. Article 76-80, included in Chapter 7 under the title "Refusal", also indicates what the consequences will be if a judge, people's adviser, prosecutor, investigator, investigator, official of the body conducting the pre-investigation check, secretary of the court session, etc. No procedural rules have been established

regarding such a possibility.

According to the content of Articles 76-80 of the Criminal Procedure Code, it is indicated that participants in criminal proceedings must be removed and cannot participate in the case under any circumstances that prevent their participation in the case.

It is worth noting that circumstances that prevent participation in criminal proceedings raise doubts not only in establishing the truth in the case, but also in the impartiality and fairness of the participant in the criminal process.

Professor B.Kh. Pulatov rightly noted that "in the presence of circumstances that prevent his participation in the case, that is, those provided for in Articles

80-76 of the Criminal Procedure Code, the prosecutor himself, as well as in the presence of the noted factors, an expert, specialist, translator, impartial, defender, including the victim, civil plaintiff or civil defendant, must refuse a representative. The statement of refusal must be substantiated. Submission of motions and their resolution is one of the important situations of the preparatory part of the court hearing".

After all, cases of failure to renounce the subjects of proof or a participant in criminal proceedings in the presence of circumstances provided for in Articles

80-76 of the Criminal Procedure Code not only raise doubts about the impartiality and fairness of the participants in the criminal process, but also affect the assessment of the admissibility of evidence in the future.

When we analyzed the norms of criminal procedure legislation of foreign countries in this matter, we saw that there is some positive experience.

In particular, Article 105 of the Criminal Procedure Code of the Republic of Armenia, which is called "materials considered inadmissible as evidence", regulates the issue of not using as admissible evidence materials collected by persons who have circumstances that prevent them from participating in criminal proceedings.

Moreover, in the Republic of Armenia, evidence collected by persons who have circumstances that prevent them from participating in criminal proceedings is considered inadmissible, and the use of these materials in the process of proving any of the grounds for accusation and conviction is prohibited.

It can be noted that a norm similar to this norm is defined somewhat differently in the Criminal Procedure Code of the Republic of Moldova. In particular, according to Article 94 of the Criminal Procedure Code of the Republic of Moldova, which is called information that is considered inadmissible as evidence, it is determined that information collected by a person who knows for sure that there are circumstances that prevent him from participating in criminal proceedings, depending on the circumstances of the case, is considered inadmissible. Based on this, it can be said that the Moldovan legislation clearly knows that there are circumstances that prevent a person empowered to collect evidence from participating in criminal proceedings, and that the information collected by him is considered inadmissible, regardless of whether it is collected in compliance with the procedure and conditions established by law, and in any of them it is further clearly regulated that it cannot be used as evidence. In addition to the above-mentioned countries, the issue of non-use as admissible evidence of evidence collected by persons who have circumstances that prevent their participation in criminal proceedings is also defined in Article 125 of the Criminal Procedure Code of the Republic of Azerbaijan. and these procedural rules are similar to the rules defined in Article 105 of the Criminal Procedure Code of the Republic of Armenia, which is set out in a similar way.

In our opinion, in the criminal procedure legislation of the Republic of Armenia, and Azerbaijan it is advisable to transfer to our national legislation the issue of non-use as admissible evidence of evidence collected by persons who have circumstances that prevent their participation in criminal proceedings.

Therefore, it is advisable to add a new clause to Part One of Article 95-1 of the Criminal Procedure Code and

state it as follows:

"if they are collected by persons who have circumstances that prevent their participation in criminal proceedings."

In our opinion, the introduction of this amendment to the CPC will prevent future problems with assessing the admissibility of evidence and will not raise doubts about the impartiality and fairness of the collected data.

It is appropriate to note here that in the first paragraph of Part One of Article 95-1 of the Criminal Procedure Code, if torture and other cruel, inhuman or degrading treatment or punishment are applied to participants in criminal proceedings or their close relatives, they are considered inadmissible as established evidence.

However, in the modern world, in the process of proof, there are also cases of receiving instructions or confirmation of a situation using drugs or technologies that affect a person's memory, contrary to modern scientific concepts. No one can guarantee that such cases will not be observed in our country in the future. In addition, drugs or technologies that affect a person's memory may not cause him pain and be completely harmless to his health.

In our opinion, it is appropriate to evaluate the collected information in cases of receiving instructions or confirming a situation using any tools or technologies that contradict modern scientific knowledge and affect human memory.

Similar procedural rules regarding the admissibility of evidence can be observed in the criminal procedure legislation of a number of countries.

In particular, Article 61 of the Criminal Procedure Code of the Republic of Estonia, known as the assessment of evidence, establishes that "it is prohibited to use torture and other forms of violence against a person" when collecting evidence" or use methods that destroy the memory and dignity of a person, and that such evidence is considered inadmissible.

Procedural rules on the inadmissibility of evidence collected using methods in the process of proof that are contrary to modern scientific knowledge are adopted in Armenia (Article 105 , of the Criminal Procedure Code), Moldova (Article 94 ,of the Criminal Procedure Code), Azerbaijan (Article 125 of the Criminal Procedure Code) and Tajikistan (Article 88 of the Criminal Procedure Code) can be observed in the criminal procedure legislation of the Republics.

In our opinion, it is advisable to transfer this positive experience to our national legislation and, for this purpose, set out the first paragraph of Part One of Article 95-1 of the Criminal Procedure Code in the

following new version:

“the use of any means or technologies that are contrary to modern scientific knowledge, affecting human memory, as well as torture and other cruel, inhuman, degrading treatment and punishment in relation to participants in criminal proceedings or their close relatives.”

Here it is worth noting that Article 95-1 of the Criminal Procedure Code regulates only the issue of the inadmissibility of evidence and does not determine the procedure for the further use of this evidence or, in other words, the consequences. on recognizing evidence as inadmissible. In our opinion, in the future, in order to achieve a reduction in errors and shortcomings associated with the admissibility of evidence or further increase the responsibility of the subjects of proof in this regard, procedural information that factual information obtained in Cases of violations of the law in the current Criminal Procedure Code can be used as admissible for the purpose of proving the guilt of the persons who committed them, during the investigation of violations of the law and in a criminal case, it is advisable to establish rules.

It can be noted that such procedural rules are defined in the criminal procedure legislation of a number of countries, in particular:

Article 94 of the Criminal Procedure Code of the Republic of Moldova, entitled “Inadmissible information as evidence”, provides that information obtained in violation of the law may be used as admissible evidence in the future as evidence confirming the facts of the relevant violation and the guilt of the persons who committed it.

Provisions that evidence collected in violation of the procedure established by the criminal procedure law and recognized as inadmissible based on the results of the assessment may be used as admissible evidence to prove the guilt of the persons who committed the facts of this violation Ukraine (Article 86 , of the Criminal Procedure Code), Moldova (Article 94 of the Criminal Procedure Code), Tajikistan (Article 88-1 of the Criminal Procedure Code), Azerbaijan (Article 125 of the Criminal Procedure Code) Republics that It can be considered a positive experience that this is defined in the criminal procedure legislation.

In our opinion, it is advisable to transfer this positive experience to national legislation and supplement Article 95-1 of the Criminal Code with a new part of the following content:

“Materials obtained through violations of the law, as provided for in Article 95-1 of this Code, may be used as admissible evidence to prove the facts of the

relevant violations and the guilt of the persons who committed them.”

In our opinion, the introduction of a new article in the Criminal Procedure Code on ensuring the admissibility of evidence effectively serves to prevent violations of the law by entities collecting, procedurally processing and verifying evidence.

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