SUBJECTS OF PROOF IN CRIMINAL PROCEDURE ON THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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Abstract: *this article is devoted to the study and discussion of concepts such as proving, subjects of proof, classification of subjects of proof, their division into groups based on the rights and obligations of proof in criminal proceedings. The article analyzes the regulatory legal acts of the criminal procedure legislation on the relevant issues of evidence, as well as the subjects of evidence in the criminal process. The author also investigated the scientific positions and judgments on the classification of subjects of evidence, their rights and obligations. There is a classification of the subjects of evidence into two groups: officials and state bodies for which evidence is an obligation, and participants in the process for whom evidence is not an obligation, but a right. So, the first group should include the court, the prosecutor, the investigator, the head of the investigating authority, the inquirer, etc.; to the second group: victim, civil plaintiff, representatives of the victim, suspect, accused, legal representative of a minor suspect and accused, defense counsel, civil defendant, representative of civil defendant, etc. In addition, the powers of these entities, namely each of the participants: the judge, the prosecutor, the investigator, the interrogating officer, the defense attorney and other participants in the evidence in the criminal trial, were discussed and disclosed. According to the results of the study of regulatory legal acts, as well as scientific positions and opinions, conclusions and relevant proposals were formed regarding the fact that: the accused is not obliged to prove his innocence; the accused cannot be assigned the duty to point to evidence confirming his innocence; the presentation of evidence of the innocence of the accused cannot be assigned to his counsel; a guilty verdict cannot be based on assumptions, however convincing others may seem.*
Keywords: *subjects, evidence, proof, subject of proof, classification, obligation, participants in the proof.*

СУБЪЕКТЫ УГОЛОВНО–ПРОЦЕССУАЛЬНОГО ДОКАЗЫВАНИЯ ПО ЗАКОНОДАТЕЛЬСТВУ РЕСПУБЛИКИ УЗБЕКИСТАН

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Аннотация: *настоящая статья посвящена изучению и обсуждению таких понятий, как доказывание, субъекты доказывания, классификация субъектов доказывания, их разделение на группы исходя из права и обязанности доказывания в уголовном процессе. В статье проанализированы нормативно-правовые акты уголовно-процессуального законодательства по соответствующим вопросам доказывания, а также субъектов доказывания в уголовном процессе. Также автором исследованы научные позиции и суждения по классификации субъектов доказывания, их прав и обязанностей. Выделяется классификация субъектов доказывания на две группы: на должностных лиц и государственные органы, для которых доказывание служит обязанностью, и участников процесса, для которых доказывание является не обязанностью, а правом. Так к первой группе следует относить: суд, прокурор, следователь, руководитель следственного органа, дознаватель и т.д.; ко второй потерпевшего, гражданского истца, представителей потерпевшего, подозреваемого, обвиняемого, законного представителя несовершеннолетнего подозреваемого и обвиняемого, защитника, гражданского ответчика, представителя гражданского ответчика и т.д. Кроме того, обсуждены и раскрыты полномочия данных субъектов, а именно каждого из участников: судьи, прокурора, следователя, дознавателя, защитника и других участников доказывания в уголовном процессе. По результатам исследования нормативно-правовых актов, а также научных позиций и взглядов были сформированы выводы и соответствующие предложения касательно того, что: обвиняемый не обязан доказывать свою невиновность; на обвиняемого не может быть возложена и обязанность указать на доказательства, подтверждающие его невиновность; представление доказательств невиновности обвиняемого не может быть возложено и на его защитника; обвинительный приговор не может быть основан на предположениях, какими бы убедительными они ни казались, и другие.*

Ключевые слова: *субъекты, доказательства, доказывание, предмет доказывания, классификация, обязанность, участники доказывания.*

In criminal proceedings, proof is a procedural form of knowing the circumstances of a criminal case carried out by an inquiry officer, investigator, prosecutor, court, with the participation of the accused, victim, defense counsel and other persons endowed with relevant rights and bearing certain duties.

Proof takes place at all stages of the criminal process. The subject of proof is one for all stages of criminal proceedings. All stages are aimed at reliable and complete identification thereof; one, the main stages (preliminary investigation and trial) - directly, by proving the full range of circumstances included in the subject of proof; the second, "providing" (initiating proceedings, bringing to court) - indirectly, by proving some of these circumstances to the extent necessary to clarify the grounds and conditions for the start or continuation of proceedings; the third, control (proceedings in the cassation and supervisory instances, reopening of cases due to newly discovered circumstances) - indirectly, by proving the presence or absence of grounds for review of sentences, rulings, decisions [1].

Proof is the core of the process, it permeates the activities of all its participants.

In accordance with the Article 85 of the Code of Criminal Procedure of the Republic of Uzbekistan, "proof consists of collecting, verifying and evaluating evidence in order to establish the truth about circumstances relevant to the lawful, justified and fair resolution of the case". Regarding the definition of the subjects of proof in the science of criminal process, there are different opinions. So, some authors believe that the subjects of proof should be considered any bodies and persons that take some part in the proof and have certain rights and obligations [2]. Surely, the subjects of proof participate in these activities and have certain rights, but such a definition does not seem to be complete enough and does not answer some questions that arise. N.P. Kuznetsov [5] more correctly defines the subjects of evidence, considering them to be participants in the process, in whose activities elements of criminal procedural evidence are manifested. It is difficult to disagree with such an opinion; it very accurately expresses the criteria for determining the subjects of evidence-based activity. And, besides, this position in its semantic expression has more solid roots, relying on a large number of supporters.

The circle of these subjects is very wide. From the definition of the subjects of proof it is very difficult to understand the difference in the evidentiary activity of a particular subject. Therefore, scientists resorted to the classification of these subjects. The grounds and signs of the classifications are different. The most common is the division of the subjects of evidence into two groups: officials and government bodies, for which evidence is an obligation, and participants in the process, for which evidence is not an obligation, but a right [6].

Such a classification makes it possible to single out a group of entities that have a duty of proof. These include: the court, the prosecutor, the investigator, the head of the investigating authority, the inquirer, etc. It is they who are obliged, within their competence, to take all measures prescribed by law to establish the event, the perpetrators of the crime, and to punish them, which can be done subject to a comprehensive, complete and objective study of the circumstances of the case in the presence of broad and guaranteed rights of participants in the criminal court proceedings.

In this context, the duty of proof can be defined as "... the duty of the body of inquiry, investigator, prosecutor and court to fully, comprehensively, objectively establish by collecting, checking and evaluating evidence all the circumstances necessary for the proper resolution of the case, including the establishment of which ensures legal interests of the accused, the victim and other participants in the process" [3]. This view of the duty of proof is shared by a large group of scientists.

For the victim, civil plaintiff, representatives of the victim, suspect, accused, legal representative of the minor suspect and the accused, defense counsel, civil defendant, representative of the civil defendant, participation in the proof is a right that they can exercise at their discretion.

The duty of proof, pursuing the goal of establishing the truth, is designated in the science of criminal process by the duty of proof «in the broad sense». This obligation extends to all state bodies and all officials and is carried out at all stages of the criminal process.

But there is another view of the duty of proof, which consists, in the opinion of the supporters of this view, the duty to prove the guilt of a person in committing a crime [7]. The responsibility for proving the guilt of the accused lies with the prosecutor; the accused does not have a duty to prove his innocence [8]. The matter is one about the so-called "duty of proof in the narrow sense".

The duty of proof, understood in a broad sense, is necessary in order to determine who should collect, verify and evaluate evidence in order to establish the truth. The duty of proof in the narrow sense expresses the content of the principles of adversarial and presumption of innocence and plays the role of a regulator of the procedural burden of proving the charge, which is applicable only at the trial stage.

Features of the duty of proof have a functional background. The duty of proof of each subject is predetermined, on the one hand, by the appointment of criminal proceedings, on the other hand, by the features of the functional role of the subjects of the duty of proof. All subjects of the obligation of proof strive to achieve truth, only the ways and means of achievement are different and not just dependent, but are determined by the

functions performed by them. As an example, the investigator fulfills the duty of proof by collecting, checking and evaluating evidence at the stage of the preliminary investigation. He carries the main burden of proof in this stage. It is precisely on him that the law is entrusted with carrying out investigative and other actions by which evidence is collected and verified, and the evidence base is formed. The investigator evaluates the evidence, translating the result of the assessment into various procedural acts expressing the final or intermediate results of the evidence. It is indisputable that the investigator and the person conducting the inquiry carry out all this activity because they carry out the function of investigation. It is impossible to investigate a criminal case without collecting, checking and evaluating evidence.

The body of inquiry shall exercise its authority to investigate crimes through interrogators, on whom the head of the body of inquiry or his deputy vests these powers (Article 38 of the Code of Criminal Procedure). In a similar way, the issue is resolved if there is a written order from the investigator to the inquiry body on the performance of certain investigative and other procedural actions. Thus, the body of inquiry as a collegial body does not participate directly in proving – carrying out investigative and other procedural actions to collect evidence. Such participation may be carried out by the inquiry body only when it is represented by a specific person. It is in such cases that the body of inquiry can act as the subject of evidence.

Similarly, the head of the investigative department acts as the subject of evidence in those relatively rare cases when he takes the matter to his production and carries out the preliminary investigation in full, while possessing the powers of the investigator or the head of the investigative group.

The prosecutor is among the subjects of proof of the group in question only at the stage of pre-trial proceedings, when he is authorized to initiate criminal proceedings and entrust his investigation to the investigator or interrogating officer or to accept him for his proceedings; when he participates in a preliminary investigation and, if necessary, gives written instructions on the direction of the investigation, the production of investigative or other procedural actions, or personally performs separate investigative and other procedural actions. The prosecutor acts as the subject of evidence when he agrees to the investigator or interrogating officer to initiate petitions before the court for certain investigative and other procedural actions that are allowed only on the basis of a court decision. Cancellation of illegal or unreasonable decisions of the investigator or interrogating officer is also carried out by the prosecutor on the basis of verification and assessment of evidence. All this gives reason to unconditionally include the prosecutor among the subjects of evidence of the first group.

To date, the defender had the right to collect not evidence, but information that could be used as evidence, which violated the principle of adversarial proceedings in court. By the Decree of the President of the Republic of Uzbekistan “On Additional Measures to Strengthen Guarantees of Citizens' Rights and Freedoms in Judicial Investigation Activities” dated November 30, 2017, the defender was empowered to collect and present evidence that must be attached to the materials of the criminal case. In addition, in accordance with the explanations of the Plenum of the Supreme Court of the Republic of Uzbekistan [9], one of the conditions for the admissibility of evidence is that “the evidence must be obtained by the proper subject, i.e. a person authorized to carry out the procedural action during which evidence was obtained”.

A special role in the proof in a criminal case belongs to the court. The court creates the necessary conditions for the parties to fulfill their procedural obligations and exercise the rights granted to them. In combination with the absence in the current Code of Criminal Procedure of a norm that would directly oblige the court, as well as other subjects of proof of the first group, to establish the circumstances of the case comprehensively, fully and objectively, this gives rise to statements that the court is not the subject of proof at all.

It is difficult to agree with such an opinion. Firstly, part 1 of Article 86 of the Code of Criminal Procedure explicitly calls the court among the subjects for collecting evidence, and this is absolutely correct. Without such authority, the court would be deprived of the opportunity to issue a lawful, reasonable and fair sentence, i.e. fulfill its primary function in the process. Another thing is that the court should not be too active here, so as not to take the side of one of the competing parties. However, in order to verify the evidence submitted to it by the parties, the court can and should, where necessary, carry out procedural actions, including on its own initiative. He has the right to interrogate the defendants, victims and witnesses, an expert whom he can call for this on his own initiative. The court may also order an examination, carry out an inspection, an investigative experiment, presentation for identification, examination.

The law does not impose on the court the obligation to prove the guilt of the defendant, as he does in relation to other subjects of proof of the first group, however this does not mean exemption from the duty of proof in general. First of all, he is obliged to prove to himself the existence of grounds for making any decision on the case. The court carries out a comprehensive verification of the evidence submitted to it by the parties and gives them a final assessment, on the basis of which it makes all decisions in the case, including the final ones. All this allows us to argue that the court, of course, is the subject of evidence.

The second group of subjects of evidence, as already noted, is composed of: a prosecutor supporting the prosecution; suspects, accused, defendants; defender; the victim and his representative, the civil plaintiff and civil defendant (they can be both individuals and legal entities) and their representatives. All of them participate in the process of proving from specific, predefined positions and are not directly responsible for achieving the

tasks of proof at the corresponding stages of the process, although they contribute to their implementation through their procedural activities.

The prosecutor supports the prosecution in court, submits the evidence to the court, participates in the study of all the evidence presented to the court by the parties, as well as in the performance of all investigative and judicial actions that are carried out during the judicial investigation. He carries out his assessment of evidence and on this basis makes proposals on all issues arising during the trial, including the merits of the final court decisions.

The suspect, the accused, as well as the victim, civil plaintiff, civil defendant and their representatives have the right to collect and submit written documents and objects for inclusion in the case as evidence (part 2 of Article 86 of the CPC). However, endowing these entities with this right, the law does not determine the forms and methods of collecting objects and documents and does not establish the procedural order for their transfer to the investigator or interrogating officer, as well as the procedure for their adoption and inclusion in the case as evidence. It seems obvious that the independent detection of relevant items and documents for these entities is very difficult, and in many cases simply impossible.

Rather important is the distribution of responsibilities for proving between its subjects. A general rule in this regard was formulated in Roman law: “Ei incumbit probatio, qui dicit, non qui negat” (The proof is presented by the one who argues, not the one who denies). This rule is, to one degree or another, prescribed by almost all legal systems in the world, but in the criminal process its application is limited to the presumption of innocence. Indeed, the duty of proof lies with the criminal prosecution authorities, which claim that the person brought to justice is guilty. However, a suspect or accused who claims to be innocent is not required to prove the correctness of this statement. Consistently, this rule is implemented in national criminal proceedings.

Article 26 of the Constitution of the Republic of Uzbekistan stipulates that everyone accused of committing a crime shall be presumed innocent until proved guilty by law, through a public trial, in which he is provided with all opportunities for protection. These provisions are enshrined as a principle of criminal procedure in Article 23 of the Code of Criminal Procedure of the Republic of Uzbekistan. They represent universal legal values enshrined in article 14 of the International Covenant on Civil and Political Rights. From them follow the rules that should be guided in proof.

1. The accused is not required to prove his innocence. He bears no legal or practical obligation to provide evidence of his innocence. Neither the investigation, nor the court can substantiate their conclusion about the guilt on the fact that the accused could not provide evidence refuting the allegation of his guilt, or refused to do so. Refusal of the accused to testify cannot be regarded as evidence of his guilt.

2. The accused may not be charged with the duty to point to evidence confirming his innocence. He may be practically interested in this: if he indicates evidence confirming his innocence, it is easier for the investigator or the court to obtain this evidence, verify it and make the right decision. However, if the accused does not indicate the circumstances by which his innocence can be confirmed, this does not entail adverse legal consequences for him.

3. The presentation of evidence of the innocence of the accused cannot be assigned to his defense counsel. If the defense attorney does not provide evidence that would convince the investigation or the court of the innocence of the accused, this will not entail adverse legal consequences for the latter. It is enough for the defender to raise doubts in the court about the evidence of the prosecution, and if these doubts cannot be eliminated in the course of the proceedings, the court is obliged to order an acquittal.

4. The conviction cannot be based on assumptions, no matter how persuasive they may seem. Such a verdict can only be based on evidence verified during the trial.

5. When considering a request to exclude evidence stated by the defense on the basis that the evidence was obtained in violation of the requirements of the CPC, the obligation to prove the existence of such a violation rests with the party that filed the request, i.e. on the defense side. However, the duty to refute the arguments presented by the defense lies with the prosecutor.

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