International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 04 ISSUE 12 PAGES: 13-22
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

Journal Website: https://theusajournals.com/index.php/ijlc

Research Article

SOME PROBLEMS OF ENSURING THE ADMISSIBILITY OF EVIDENCE IN CRIMINAL PROCEEDINGS

Submission Date: November 29, 2024, **Accepted Date:** December 03, 2024,
Published Date: December 09, 2024
Crossref doi: https://doi.org/10.37547/ijlc/Volume04Issue12-03

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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 developed.

KEYWORDS

Crime, evidence, admissibility, gathering evidence, examining evidence, evaluating evidence, proving.

INTRODUCTION

Today, in the process of ongoing judicial and legal reforms in our country, regulatory legal acts adopted and aimed at strengthening the protection of individual rights during pre-trial investigation, investigation and trial are also aimed at strengthening the guarantees of the rights and legitimate interests of persons participating in the criminal process, in particular, the suspect and the accused.

Because, on the basis of these foundations, in recent years, in Uzbekistan, in order to increase the effectiveness of activities aimed at identifying, collecting, verifying, evaluating evidence and ensuring the admissibility of evidence, a number of laws and regulatory legal acts have been adopted and put into effect, but an analysis of the norms of the Code of Criminal Procedure and criminal cases conducted by practical bodies shows that activities aimed at ensuring the admissibility of evidence are not working sufficiently, and there are legal gaps and mutually inconsistent norms in the norms of the law.

However, these mutually incompatible norms require first studying the rules established in the norms of the Code of Criminal Procedure.

Because, according to the third part of Article 95 of the Code of Criminal Procedure, the admissibility of evidence collected in the established procedure is subject to the conditions established in 5 articles of the Code of Criminal Procedure.

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That is, according to it, "Evidence shall be recognized as admissible only if it has been collected in the established procedure and complies with the conditions provided for in Articles 88, 90, 92-94 of this Code."

Summarizing these rules, for an argument to be admissible:

first of all, the procedure for its collection established by law has been followed;

Secondly, the evidence must comply with the conditions stipulated in Articles 88, 90, 92-94 of the Code of Criminal Procedure.

If the evidence was collected in accordance with the procedure established by law, but does not comply with the conditions stipulated in Articles 88, 90, 92-94 of the Code of Criminal Procedure, it cannot be assessed as admissible evidence and used in a criminal case.

Similarly, evidence that complies with the conditions stipulated in Articles 88, 90, 92-94 of the Code of Criminal Procedure, but was not collected in accordance with the procedure established by law, cannot be assessed as admissible evidence.

That is, in order to prevent different interpretations of the requirements of criminal procedural law at the pre-investigation, investigation and trial stages of the criminal process, the subjects carrying out the proof must realize their high responsibility.

As stipulated in the Resolution No. 24 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated August 24, 2018 "On Certain Issues of the Application of the Norms of Criminal Procedure Law on the Admissibility of Evidence," "Any deviation by the inquiry officer, investigator, prosecutor, and court from the strict implementation and observance of the norms of the law, regardless of the reason for which it occurred, shall lead to the recognition of the evidence obtained in this way as inadmissible (invalid).

"Inadmissible evidence has no legal force and cannot be used to prove the circumstances provided for in Articles 82-84 of the Criminal Procedure Code and cannot be used as a basis for accusations." .

Cases of using unacceptable evidence as a basis for accusations in criminal proceedings are a common occurrence in the activities of investigative bodies and courts, and these cases can be seen in the example of acquittals issued by courts in our country in recent years.

In particular, in the past year 2023 alone, 1,244 people were acquitted and rehabilitated by courts shows that the above opinion is valid.

It is worth noting that the analysis of acquittals allows for a more in-depth study of the current state of ensuring the admissibility of evidence in criminal proceedings, existing problems, violations of the law in the process of gathering, checking and evaluating evidence.

In addition, it is possible to assess the quality of pretrial investigation, investigation, and trial by studying acquittals in situ .

According to D.J. Suyunova, Y.Y. Koniushenko, N.S. Nguindip, "The procedural significance of acquittal is one of the most important procedural methods of acquitting the defendant and eliminating injustice. It not only provides a statement about the procedural errors made by the preliminary investigation bodies, but also eliminates this error by rehabilitating the defendant, who was found innocent. In the verdict of

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acquittal, all previously performed procedural actions are accounted for." .

In our opinion, based on the above and in order to provide a detailed description of the existing problems in ensuring the admissibility of evidence in criminal proceedings, it is appropriate to classify them as follows:

1) organizational problems related to ensuring the admissibility of evidence;

2) theoretical problems related to the admissibility of evidence;

3) problems related to the existence of gaps and inconsistencies in the legislation on the admissibility of evidence;

4) problems related to the lack of legal knowledge, skills and qualifications of the subjects of proof responsible for determining the admissibility of evidence.

1. Organizational problems related to ensuring the admissibility of evidence.

The first of the organizational problems related to ensuring the admissibility of evidence is the extreme complexity of the organizational requirements for collecting evidence in criminal procedural legislation.

This can be considered as organizational problems related to the preparation and conduct of pre-investigation checks, investigation, procedural actions during the trial, as well as operational-search measures.

As B.A. Rajabov puts it, "The subject of proof, who is trying to ensure the admissibility of evidence, has to spend a lot of effort and effort and incur excessive costs to turn a single piece of factual information into admissible evidence. This also negatively affects the effectiveness of the effective investigation of criminal cases or the provision of justice." .

For example, "the head of the company was caught accepting a bribe in his office. He asked the National Security Service and the prosecutor's office to draw up a report in the offices of these bodies, fearing that it would damage the company's reputation and negatively affect his work. Thus, the procedural document stating that the head of the company had accepted a bribe was drawn up in the prosecutor's office, but the place of its drawing up was indicated as the head of the company's office. During the trial, the defense attorney drew the attention of the court participants to this very fact. He filed a motion to question witnesses on this issue. The witnesses questioned as witnesses confirmed that the report confirming the acceptance of the bribe was drawn up in the prosecutor's office and that they signed it there. However, in accordance with Article 90 of the Criminal Procedure Code, the information recorded in the report of the investigative action is recognized as evidence. In this case, the fact that the head of the company accepted a bribe in his office casts doubt on the fact that the information in the document drawn up on this case was found inadmissible by the court." .

As can be seen, the criminal procedural law not only establishes a very precise procedure for collecting and formalizing evidence, but also clearly regulates the place, time, form, method of their formalization, by whom they are formalized, and other such criteria. I.V. Abrosimov, paying special attention to the errors made by the subjects of proof in organizational matters when finding evidence inadmissible, notes that the violations noted in his research work correspond to the requirements of the criminal procedural law, which determine the timing, procedural order of the

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investigative action; the composition of its participants; the procedure for collecting, consolidating and verifying evidence, and that these violations can be general for all investigative actions and specific, specific to individual investigative actions, as well as eliminable and non-eliminable, specific and vague emphasizes.

I.V. Abrosimov's opinion, it can be said that one of the main reasons for the future assessment of the evidence collected in the case as unacceptable evidence is the violations of the law committed by the subjects of proof in this regard.

Therefore, in order to ensure the admissibility of evidence, the subjects of proof, along with having the necessary knowledge and skills, must unconditionally comply with the requirements of criminal procedural legislation in the processes of collecting, examining and evaluating evidence.

One of the organizational problems associated with ensuring the admissibility of evidence is the condition of involving at least two adult citizens who are not interested in the outcome of the case as witnesses, as established in Part Two of Article 73 of the Code of Criminal Procedure.

Although this condition may not seem like a problem at first glance, in judicial and investigative practice, it creates unnecessary hassles in the process of conducting procedural actions, such as searching for witnesses, obtaining their consent, and taking them to the place where the investigative action is being conducted, and occupying the witnesses' time until all processes are completed.

However, the legislator, in addition to first setting an age limit for witnesses participating in the case, also sets conditions related to their being a citizen (a person without citizenship is not involved) and not having an interest in the outcome of the case.

Because "the complexity of the mechanism of criminal proceedings, including the procedure for proving, and the criminal procedural requirements for the process of proving, is counterproductive to the effectiveness of the activity, and it is important to achieve simplicity and ease of this mechanism in ensuring compliance with the general conditions of proof. It is complexities, artificial obstacles and some inconsistencies in the law in the mechanism of criminal proceedings that hinder the timely and complete implementation of the tasks of the criminal procedural legislation and create problematic situations .

It is worth noting that, in accordance with paragraph 8, subparagraph b) of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated August 24, 2018 No. 24 “On Certain Issues of the Application of the Norms of the Criminal Procedure Code on the Admissibility of Evidence”, if an interested person in the case, including employees of law enforcement agencies or other persons assisting them on a public basis, participated in the investigative action as an eyewitness, the collected evidence shall be considered inadmissible.

According to this rule, in order to ensure the admissibility of evidence, the subjects of proof are required to take into account not only the age and citizenship qualifications of the eyewitnesses, but also the qualifications established for the position they hold.

In our opinion, in order to find a solution to such problems in the future, it is advisable to supplement Article 73 of the CPC with a new part and rephrase it as follows:

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"In special cases specified in this Code, investigation and other procedural actions can be conducted without the participation of impartial people, using technical means by continuous video recording."

In this case, if violations of the law are observed in the conduct of investigative actions using technical means without the participation of impartial persons, the collected evidence is considered unacceptable and cannot be used as evidence. In addition, before the investigation, an official of the investigative body, an inquiry officer, an investigator, a court, when consolidating evidence, may not only take the actions specified in Part Four of Article 91 of the Criminal Procedure Code (1) inspection of the scene of the crime in cases of especially serious crimes; 2) search; 3) examination of evidence at the scene of the crime; 4) investigative experiment; 5) detention of a person; 6) refusal to provide a defense lawyer; 7) personal search and seizure during the detention of a person) rather, it will be possible to carry out all procedural actions specified in CPC using technical means without impartial participation.

2. Theoretical problems related to the admissibility of evidence.

The core of the concepts of admissible evidence or inadmissible evidence is the term evidence. Evidence that is found inadmissible in the proceedings is deprived of the status of evidence and is not allowed to be used in the subsequent stages of the criminal process.

In our opinion, the application of the term "evidence" to inadmissible evidence that is not used in the subsequent stages of the criminal process does not correspond to the rules of logic. Because, according to Article 81 of the Criminal Procedure Code, the basis of evidence is true information.

The fact that evidence that is considered inadmissible consists of true information is always in doubt or may consist of incorrect information.

Therefore, in our opinion, it is appropriate to use the term "evidence" in criminal procedural theory and legislation only in relation to admissible evidence.

As E.E. Kurziner rightly noted, "Acceptable evidence should be considered evidence whose collection and verification processes do not cast doubt on the reliability of the evidence and the observance of the constitutional rights and legitimate interests of citizens." E.A. Kupryashina, in her research work, specifically addressed the issue of "Inadmissible evidence," emphasizing that such information does not have legal force and cannot be used as a basis for accusations, and proposed replacing "Inadmissible evidence" with the words "Other information obtained in violation of the requirements of the Code."
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At this point, we fully agree with this opinion of E.A. Kupryashina and consider it incorrect to call this information evidence, even in any form (for example, inadmissible evidence), if it was obtained in violation of the requirements established by criminal procedural legislation.

It should be noted that in the analysis of the criminal procedural legislation of foreign countries, one can see different approaches to this issue.

In particular, in Article 105 of the Criminal Procedure Code of the Republic of Armenia Instead of the phrase "inadmissibility of evidence," the phrase "materials considered inadmissible as evidence" was used. Of course, this can be considered a positive experience.

Article 94 of the Criminal Procedure Code of the Republic of Moldova instead of the sentence

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"inadmissibility of evidence" the sentence "Information considered inadmissible as evidence" was used.

Article 319 of the Japanese Criminal Procedure Code states that confessions obtained under duress, torture, or intimidation, confessions made after prolonged detention in order to admit guilt, and any other statements not given voluntarily, are not only admissible or inadmissible evidence, but are also not considered evidence at all. . That is, in the criminal procedural legislation of Japan, instead of "inadmissible evidence", information that is not considered evidence is used.

In our opinion, it is appropriate to study this positive experience in the criminal procedural legislation of countries such as Armenia, Moldova and Japan in the Criminal Procedural Code of the Republic of Uzbekistan.

In this regard, it should be noted that the criminal procedural legislation of a number of foreign countries studied by us stipulates that no evidence has a predetermined legal force (Article 136 of the CPC of Turkmenistan , Tajikistan CPC 88-m , Georgia 82nd Criminal Procedure Code , Moldovan Criminal Code 101st , Estonia CPC 61st , Ukraine CPC 94-m) It is also appropriate to emphasize.

These analyses determine that not only inadmissible evidence, but also admissible evidence does not have a predetermined legal force, and in our opinion, this rule can also be assessed as a positive experience in the criminal procedural legislation of foreign countries.

3. Problems related to the existence of gaps and inconsistencies in the legislation on the admissibility of evidence.

The Criminal Procedure Code does not provide a precise definition of the admissibility of evidence, and it is merely a reference provision, making it difficult to understand the detailed procedure.

More specifically:

firstly, in Article 95 of the CPC, the legislator limited himself to referring to compliance with the rules of Articles 87, 88, 90, 92-94 of this law, without expressing in specific sentences the requirements for when evidence may be admissible;

secondly, although Article 95-1 of the CPC lists information that should be considered inadmissible as evidence, these procedural rules repeat the procedural rules in a number of norms of the law;

Thirdly, it is difficult to compile a precise list of violations of the rules on the inadmissibility of evidence in cases of actions contrary to this law, as provided for in Article 95-1 of the Code of Criminal Procedure, and this list contains a number of vague requirements of the Code, including the phrase "obtained in violation of the requirements of this Code" in this article.

Therefore, in our opinion, it is expedient to develop the necessary recommendations to eliminate these gaps and inconsistencies in the legislation in the future, as well as to prevent violations of the law in this regard by the entities carrying out the proof.

Considering that the issue of determining the admissibility of evidence is resolved as a result of its assessment by the entities carrying out the proof, special attention should be paid to the mandatory consideration of the following:

firstly, whether the entity authorized to perform procedural actions aimed at determining evidence has the right to perform this action;

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secondly, the admissibility of the source that constitutes the content of the evidence;

thirdly, the compliance of the procedural actions taken to collect evidence with the requirements of the law;

fourthly, it is necessary to check and evaluate the correctness of the procedure for carrying out the procedural action that serves as a means of collecting evidence .

4. Problems associated with the lack of legal knowledge, skills, and qualifications of the subjects of proof responsible for determining the admissibility of evidence.

Evaluating the admissibility of evidence requires first of all that the subjects of proof have the necessary knowledge, skills and qualifications in the field of jurisprudence, in particular criminal procedural law, and in accordance with the requirements of regulatory legal documents issued by the legislature and competent authorities in this regard.

Already, in the first part of Article 95 of the CPC, which defines the rules for the evaluation of evidence It is not for nothing that the subjects of proof should evaluate the evidence based on their inner convictions, acting in accordance with the law and legal consciousness, based on a thorough, complete, comprehensive and objective consideration of all the circumstances of the case.

The analysis of criminal cases conducted in judicial-investigative bodies does not deny that the same evidence is evaluated differently by two subjects. This idea is also confirmed by the analysis of the studied acquittals.

It should be noted separately that the different approaches to assessing evidence cannot be fully attributed to the legal literacy of the subjects of proof. Because in this matter, it is also important to take into account the differences in the powers and interests of the investigator, investigator, prosecutors and the court in assessing evidence. Because the investigator, investigator, prosecutor, when assessing evidence, pay more attention to supporting the accusation in court. The court, however, when assessing evidence, acts within the framework of the powers established for it by criminal procedural legislation, without being bound by these obligations. .

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Therefore, in our opinion, it is advisable to develop proposals and recommendations to enrich the knowledge of the subjects of proof responsible for determining the admissibility of evidence so that they do not violate the law in this regard in the future.

It should be noted that in some cases, the subjects of proof responsible for determining the admissibility of evidence do not follow the laws of the science of "Logic" in the process of evaluating evidence.

Because compliance with logical laws is a necessary condition for criminal procedural knowledge, since it guarantees the achievement of real results in solving the tasks that arise in the process of knowledge, therefore, violations of both legal instructions and logical laws should be equally prohibited in the process of proof. .

E.D. Gorevoy emphasizes in his research work the importance of logical thinking in the evaluation of evidence. He states that "The logical element represents the evaluation of evidence as an intellectual activity carried out in accordance with the basic laws of formal logic, in compliance with the scientific methodology of knowledge, and associated with thinking about the value of probative information." insists that.

One can fully agree with this opinion, as Article 95 of the Code of Criminal Procedure states that "The inquiry officer, investigator, prosecutor and court shall evaluate the evidence based on their inner convictions, acting in accordance with the law and legal consciousness, based on a thorough, complete, comprehensive and impartial consideration of all circumstances in the case." Inner conviction is closely related to acting in accordance with the law and legal consciousness, as well as to the logical thinking abilities of the inquiry officer, investigator, prosecutor and court.

Therefore, drawing conclusions from the above analysis, we believe that in order for the subjects of proof responsible for determining the admissibility of evidence to avoid future violations of the law in this regard, it is advisable to recommend the following:

Enrich the lecture courses and working subject programs of relevant disciplines of higher educational institutions under the control of law enforcement agencies with examples, cases and case studies reflecting situations related to violations of the legislative requirements on the admissibility of evidence in judicial and investigative practice;

Organize and conduct at least two one-day advanced training courses with inquiry officers and investigators on the topic "Procedural legislative requirements on the admissibility of evidence and shortcomings in its implementation" with the involvement of experienced professors and teachers of higher educational institutions under the control of law enforcement agencies and experienced employees of the field;

To introduce a new subject called "Logical Thinking" into the curricula of higher education institutions under the jurisdiction of law enforcement agencies and ensure that it is taught after the semester (study module, etc.) in which the subject "Logic" is taught. In our opinion, taking into account these proposals and recommendations will serve as a solution to a number of problems related to the admissibility of evidence and will help to eliminate gaps in this regard.

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