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Normative content of the principle of immediacy of research of testimonies, things and documents during criminal procedural evidence

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Abstract

The objective of the article was to analyze the tactical and procedural characteristics of conducting a record in the investigation of crimes against public security. To achieve the objective in the research process, a system of general and special methods is used, such as: dialectical method; method of systematic analysis of legal norms; comparative legal method; statistical method. Based on the study of legislation, scientific sources, the results of the generalization of investigative and judicial practice, current issues of normative content of the principle of immediacy of the study of evidence and the problems of its implementation during criminal procedural evidence. It is concluded that this principle determines the responsibilities of the persons conducting the trial (questioning suspects, accused, witnesses, victims, experts, hearing expert opinions, reviewing physical evidence, announcing and examining documents, audio and video recordings), to whom correspond the rights of other participants to present evidence, to become personally familiar with the materials of criminal proceedings, receive copies of procedural

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documents, participate directly in investigative and judicial actions. Finally, attention is paid to problematic issues related to the definition of the limits of the principle.

Keywords: principle of immediacy of the examination of the test; assessment of the evidence; researcher; investigating judge; internal conviction of the judge.

Características tácticas y procesales de la realización de un registro en la investigación de delitos contra la seguridad pública

Resumen

El objetivo del artículo fue analizar las características tácticas y procesales de la realización de un registro en la investigación de delitos contra la seguridad pública. Para lograr el objetivo en el proceso de investigación se utiliza un sistema de métodos generales y especiales, tales como: método dialéctico; método de análisis sistemático de las normas jurídicas; método jurídico comparativo; método estadístico. Partiendo del estudio de la legislación, fuentes científicas, los resultados de la generalización de la práctica investigativa y judicial, temas de actualidad de contenido normativo del principio de inmediatez del estudio de la prueba y los problemas de su implementación durante la prueba procesal penal. Se concluye que este principio determina las responsabilidades de las personas que conducen el juicio (interrogar a sospechosos, imputados, testigos, víctimas, peritos, escuchar dictámenes periciales, revisar pruebas físicas, anunciar y examinar documentos, grabaciones de audio y video), a quienes corresponden los derechos de otros participantes para presentar pruebas, familiarizarse personalmente con los materiales de los procesos penales, recibir copias de los documentos procesales, participar directamente en las acciones investigativas y judiciales. Por último, se presta atención a cuestiones problemáticas relacionadas con la definición de los límites del principio.

Palabras clave: principio de inmediatez del examen de la prueba; valoración de la prueba; investigador; juez de instrucción; convicción interna del juez.

Introduction

The current Criminal Procedure Code of Ukraine, adopted in 2012, enshrined Chapter 2 “Principles of Criminal Procedure”, resulting in a revision of the system of principles of criminal procedure in accordance with generally accepted requirements of international and European standards. Among them, the domestic legislator attributed the principle of immediacy of the study of testimony, things and documents (paragraph 16 of Part 1 Art. 7 and Art. 23 Criminal Procedure Code of Ukraine) (Criminal procedure code of Ukraine, 2012), which is one of the important legal provisions of criminal proceedings.

The importance of the principle of immediacy for criminal proceedings is primarily because the direct receipt of information by a participant in criminal proceedings provides maximum completeness and correctness of its perception, which is a necessary condition for forming reliable evidence and making sound, objective and fair decisions (Dekhtyar, 2014). Ensuring compliance with the principles of adversarial proceedings, the rule of law and the rule of law in the process of pre-trial investigation is the main guideline of investigating judges in Ukraine in the exercise of judicial control powers (Sukhov, 2021).

Normative consolidation of the main provisions of the principle immediacy study of testimony, things and documents in the criminal procedure law requires the definition of directions for its implementation in law enforcement practice. Currently, discussions in the doctrine of criminal procedure cause problems of elements normative content principle of immediacy, its study from the standpoint of proof. The influence of the principle of immediacy on the stage of pre-trial investigation, the decision on the use of the results of covert investigative (search) actions in criminal proceedings and in the conduct of procedural actions remains poorly studied. Procedural guarantees of the parties acquire special significance for realization principle of immediacy research of indications, things and documents.

Thus, the consolidation by the domestic legislator the new system of criminal proceedings principles, referring to it the principles of testimony immediacy, things and documents, the lack of its implementation at the stages of pre-trial investigation and trial necessitate research in this area, which will be the subject of a scientific article.

1. Methodology of the study

To achieve this goal in the research process used a system of general scientific and special research methods. The method of historical and legal

analysis allowed to study the formation and development of scientific, theoretical and legal foundations of the principle of immediacy in the theory of criminal procedure and criminal procedural law. The application of the dialectical method contributed to the study of the dynamics and relationship of tasks, deepening the conceptual framework, clarifying the essence of the principle of immediacy, identifying elements of its normative content and research problems related to the implementation of this principle in criminal proceedings at various stages. With the help of the method of systematic analysis of legal norms, gaps and contradictions in normative-legal acts were revealed and proposals for improvement of the current legislation were formulated. The comparative legal method was used to compare the norms of criminal procedural law of Ukraine. The statistical method was used in the study and generalization of case law, the formation and substantiation of conclusions based on their results.

2. Analysis of recent research

The problem of evidence, their formation and use in criminal proceedings traditionally belongs to those that attract the most attention of experts at different historical stages of development of the state and legislation. However, in the perspective of the latest legislation of Ukraine, not many scientific works have been devoted to the study of its problematic aspects, in particular, N. Cherkasova (Cherkasova, 1993), O. Dekhtyar (Dekhtyar, 2013), Y. Groshovii, O. Kaplina (Groshovii and Kaplina, 2010), V. Konovalova (Konovalova, 2005), V. Nor, T. Shevchuk (Nor and Shevchuk, 2019), Y. Orlov (Orlov, 1981), O. Shilo (Shilo, 2015), M. Shumilo (Shumilo, 2013), M. Strogovich (Strogovich, 1968), V. Tertyshnyk (Tertyshnyk, 2014), H. Teteriatnyk, (Teteriatnyk *et al.*, 2021) and other scientists.

It should also be noted that with the entry into force of the new Criminal Procedure Code of Ukraine, the main elements of the content of the principle of immediacy of the testimony, things and documents are subject to revision taking into account the rules set out in it, which regulate pre-trial investigation. The above necessitates the purpose of the study to determine the characteristics of personal perception of the investigator, prosecutor, investigating judge testimony, things and documents as an element of the content of the principle of immediacy at the stages of pre-trial investigation and trial.

3. Results and discussion

3.1. The essence of the principle of immediacy of the study of testimony, things and documents

The immediacy of the study of testimony, things and documents defined as the basis of criminal proceedings in paragraph 16 of Part 1 Art. 7 Criminal Procedure Code of Ukraine and formulated in Art. 23 of the Code:

> The court examines the evidence directly. The court receives the testimony of the participants in the criminal proceedings orally. Information contained in testimony, things and documents that were not the subject of direct court investigation may not be recognized as evidence, except in cases provided for by the Criminal Procedure Code of Ukraine (Criminal procedure code of Ukraine, 2012).

The court may accept as evidence the testimony of persons who do not give it directly at the hearing, only in cases provided by law. The prosecution is obliged to ensure the presence of prosecution witnesses during the trial in order to exercise the right of the defense questioned before an independent and impartial tribunal.

The essence of the principle of immediacy is the requirements of the state to ensure the implementation of such criminal proceedings, in which the court, as a body deciding on guilt (innocence), directly, free from the subjective influence of participants in the pre-trial investigation, accepts all the circumstances Criminal case.

Although the provisions Art. 23 Criminal Procedure Code of Ukraine define the main elements of the content of the principle of immediacy only in the context of the procedural activities of the court; however, a systematic analysis of the Code, departmental regulations allows a broader consideration of the content the immediacy principle, as objects that conduct criminal proceedings, and the relevant rights of other participants in the process to use evidence, their verification and evaluation, decision-making and justification of decisions, participation in procedural actions (Groshovii and Kaplina, 1999).

This principle determines the responsibilities of those who conduct the process: to interrogate suspects, accused, witnesses, victims, experts, hear the opinions of experts, review the evidence, announce and investigate documents, audio and video recordings. These responsibilities correspond to the rights of other participants to submit evidence, personally inspect the materials of criminal proceedings, to receive copies of procedural documents, to participate directly in investigative and judicial actions.

The implementation of these provisions determines the rules formulated in various articles Criminal Procedure Code of Ukraine: procedural actions

and decisions, except as provided by law, are carried out by a person authorized to conduct criminal proceedings (Art. 9 Criminal Procedure Code of Ukraine); the court hearing in each case takes place continuously, except for the time allotted for rest (Part 1 Art. 322 Criminal Procedure Code of Ukraine); each case must be heard in the same court, when one of the judges is deprived of the opportunity to continue to participate in the hearing, he must be replaced by another judge, and the case begins from the beginning, except as provided in Part 2 Art. 319 Criminal Procedure Code of Ukraine; the court substantiates the verdict based only on the evidence that was examined at the hearing (Part 3 Art. 370 Criminal Procedure Code of Ukraine); it is not allowed to announce testimony in court, except in cases expressly provided by law (Art. 23 Criminal Procedure Code of Ukraine); the participation of the defendant in the court hearing is mandatory, except as expressly provided by law (Art. 323 Criminal Procedure Code of Ukraine); the trial is carried out with the obligatory participation of the parties to the criminal proceedings, except as provided by the Criminal Procedure Code of Ukraine (Part 2 Art. 318 Criminal Procedure Code of Ukraine) (Criminal procedure code of Ukraine, 2012).

From the above it gave posibility to see that the principle of immediacy specified in many rules, obliging the court, pre-trial investigation authorities to act in such a way as to establish important circumstances in the proceedings and ensure the actual exercise of their rights, including such important as the suspect protection. It is in the process of direct examination of evidence by the court that opportunities are created for the accused to refute or mitigate the accusation, use his right to ask questions to the person testifying against him, draw the judges' attention to the weaknesses of individual evidence in terms of their requirements in the case.

Based on the current version Art. 23 Criminal Procedure Code of Ukraine, other articles detailing the principle of immediacy, we can conclude that there are two elements in its structure: personal perception of evidence by participants examining them, and justification of the decision by evidence examined and evaluated personally. It should be noted that the name of the principle in the current version – «immediacy of the study of testimony, things and documents» narrows the true meaning of this principle, based on the provisions of the constituent parts Art. 23 Criminal Procedure Code of Ukraine. It is obvious that paragraph 16 of Part 1 Art. 7 Criminal Procedure Code of Ukraine, and Art. 23 of the Code define the relevant principle as the immediacy of the study of testimony, things and documents. At the same time in the provisions of Parts 1, 2 Art. 23 Criminal Procedure Code of Ukraine is a direct study of the evidence, which according to the current Code (Part 2 Art. 84), in addition to the above, also include the conclusions of experts. It is believed that this lack of legislative technique in general does not affect the perception of the normative content of the principle of

immediacy, taking into account the mentioned source, because, as is known from the general theory of law, the rule of law does not always coincide with the article. some set of prescriptions of articles. In our case it is Art. 84, 101 Criminal Procedure Code of Ukraine (Dekhtyar, 2014).

3.2. Stages of criminal proceedings to which the principle of directness of research of indications, things and documents extends

Normative consolidation of the immediacy of the study of testimony, things and documents as one of the general principles of criminal proceedings (paragraph 16 of Part 1 Art. 7 and Art. 23 Criminal Procedure Code of Ukraine) necessitates a review of the stages of criminal proceedings to which it applies. Although Art. 23 Criminal Procedure Code of Ukraine reveals the main elements of the content of this principle only in relation to court stages, but Part 1 Art. 7 Criminal Procedure Code of Ukraine stipulates that the content and form of criminal proceedings must comply with the general principles of criminal proceedings (Criminal procedure code of Ukraine, 2012).

This approach of the legislator to determine the role of the general principles of criminal proceedings suggests that during the trial in the first instance the principle of immediacy of the testimony, things and documents is implemented in full taking into account the features defined by the Criminal Procedure Code of Ukraine and its implementation in other stages. criminal proceedings, including during the pre-trial investigation, have a significant specificity due to the significant number of exceptions to the general rules on personal perception and evaluation of evidence (Dekhtyar, 2013).

As rightly noted by N. Cherkasova, direct examination of evidence, which is carried out at the stages of pre-trial investigation and trial, are two independent forms of research (Cherkasova, 1993). A thorough analysis process of proof at these two stages reveals significant differences in the study of evidence. In particular, at the stage of trial evidence is examined with the direct participation of the prosecution and defense (Part 2 Art. 318 Criminal Procedure Code of Ukraine), which allows them to personally perceive all evidence (both accusatory and exculpatory) simultaneously with the court and other participants in the trial. proceedings and be in the same conditions during the formation of its legal position, in contrast to the stage of pre-trial investigation, for which such a situation is not typical.

In order to expand the content of the principle of immediacy regarding the stage of pre-trial investigation in the legal literature, proposals were made to supplement it with provisions that both the court and the investigative body should take measures (within the limits and forms prescribed by law)

to establish direct contact with participants. This will allow them to directly perceive the course and results of procedural actions, to communicate freely, without intermediaries with the persons who exercise them, to fully use the rights to protect their legitimate interests and timely perform their duties (Shundikov, 1974). The principle of immediacy in relation to these participants is manifested in giving them the right to familiarize themselves with the materials of criminal proceedings.

It should be noted some positive changes in this direction, due to the adoption in 2012 of the new Criminal Procedure Code of Ukraine. Thus, Art. 221 Criminal Procedure Code of Ukraine obliges the prosecutor, investigator in the pre-trial investigation at the request of the defense, the victim, the representative of the legal entity in respect of which the proceedings are conducted, to provide them with pre-trial investigation materials (with some exceptions). the person performing it has the right to make the necessary extracts and copies.

In accordance with Part 6 Art. 223 Criminal Procedure Code of Ukraine investigative (search) action is carried out at the request of the defense, the victim, the representative of the legal entity that initiated it, and (or) its defense counsel or representative, except when due to the specifics of the investigative (search) action it is impossible the person refused to participate in it in writing (Criminal procedure code of Ukraine, 2012).

The need to distinguish between pre-trial and forensic evidence was one of the first after the adoption of the new criminal procedure legislation of Ukraine pointed out by M. Shumylo – the evidence in the pre-trial proceedings will be only for the investigator and the prosecutor, but probable for the defense counsel and the court. The structure of criminal proceedings under the Criminal Procedure Code of Ukraine, the scientist rightly notes, provides that in the course of the pre-trial investigation materials are collected that can be recognized as evidence only by the court (Shumilo, 2013).

Interpretation of these rules Art. 95 (Testimony) and 225 (Interrogation of a witness, a victim during a pre-trial investigation in court) Criminal Procedure Code of Ukraine allows us to draw the following conclusions:

1) testimony provided during the pre-trial investigation is relevant only to substantiate the procedural decisions of the investigator and prosecutor (except for those testimonies obtained in accordance with Art. 225 Criminal Procedure Code of Ukraine). If the interrogation is recorded by technical means, the text of the testimony may not be entered in the relevant record of the interrogation, provided that none of the participants in the proceedings insists on it.

   In this case, the protocol states that the testimony is recorded on the media attached to it (Part 2 Art. 104 Criminal Procedure Code

of Ukraine). This simplification procedural recording of testimony during the pre-trial investigation is due, in particular, to the fact that they have no probative value in court, and therefore it makes no sense to record them in writing subject to technical means (of course, if the participants do not insist);

2) court decisions may be based only on those testimonies that were directly perceived: 1) by the court – during the trial; 2) by an investigating judge – during the pre-trial investigation, which is allowed in exceptional cases related to the need to obtain the testimony of a witness or victim, if due to the danger to life and health of the witness or victim, their serious illness, the presence of other circumstances may prevent their interrogation in court or affect the completeness or accuracy of the testimony (Art. 225 Criminal Procedure Code of Ukraine).

3.3. Investigating judge as a subject of examination of testimony, things, documents and expert opinions

One of the biggest restrictions on human rights and freedoms during the pre-trial investigation is the application of measures to ensure criminal proceedings. When studying the materials with which the prosecutor substantiates the need to apply a measure of criminal proceedings to a person, the investigating judge is faced with an extremely difficult and important task: to find a balance between protecting the person, society and the state from criminal offenses. On the other hand, to ensure the restoration and protection of the rights, freedoms and legitimate interests of the person appearing before the investigating judge, so that no innocent person is subjected to procedural coercion, in fact, to perform the tasks of criminal proceedings. In our opinion, this can be achieved only by making procedural decisions after direct examination and evaluation of the evidence provided by the parties, which, unfortunately, is not always the case with investigative judges.

We agree with the position V. Nor and M. Shevchuk that the burden of proving the existence of grounds for choosing a measure of restraint of a particular type rests with the prosecutor. The limited interpretation of the prohibition to use evidence obtained in violation of the requirements of criminal procedure law to substantiate suspicion when deciding on the choice of a measure restraint, of course, greatly facilitates the burden of proof on the prosecution and the activities of an investigating judge who does not wants to complicate the work for himself (Nor and Shevchuk, 2019).

Note that now oppose the opposite position. A. Panova notes that in Part 1 Art. 94 Criminal Procedure Code deals with the mental and intellectual

activity of the investigator, prosecutor, investigating judge, which consists in their subjective perception of factual data, as well as evaluation of this information according to their inner conviction to make a decision in criminal proceedings. Accordingly, such an assessment is purely subjective, which does not involve the adoption of a procedural decision by these subjects to recognize such facts as evidence, because they acquire the value of evidence only on the basis of their interpretation by the court (Panova, 2017).

We consider this position of the scientist to be wrong, because, in our opinion, it directly contradicts the imperative prescription contained in Art. 94 Criminal Procedure Code, which obliges the investigating judge to evaluate each piece of evidence. Evidence at the stage of pre-trial investigation exists regardless of «their interpretation by the investigating judge or court», and the only way to legally exclude them from the materials of criminal proceedings is to assess them (Panova, 2017).

The existence of different approaches to the evaluation of evidence by the investigating judge in the theory of criminal procedural law obviously results in the introduction of contradictory and sometimes erroneous practices in law enforcement. In this regard, it is logical that scientists try to investigate this problem in more detail.

Article 94 of the Code of Criminal Procedure contains provisions on the evaluation of evidence in criminal proceedings, which oblige the investigating judge on his inner conviction, which is based on a comprehensive, complete and impartial examination of all circumstances of criminal proceedings, to assess each piece of evidence. admissibility, reliability, and the totality of the collected evidence – in terms of sufficiency and interrelation for the adoption of the relevant procedural decision.

In this case, for the latter, no evidence has a predetermined force. Such a prescription Art. 94 Criminal Procedure Code can not be interpreted either literally / philologically, nor logically-substantive method, other than the obligation of full and comprehensive assessment by the investigating judge of all evidence submitted to him by the parties to the criminal proceedings, which should ultimately be the basis for a proper decision. on the basis of own, formed on the basis of evaluation of evidence, internal conviction. Otherwise, what sources (information), other than evidence, should the investigating judge be guided by when making the appropriate decision?

In accordance with the principle of immediacy of the examination of testimony, things, documents and expert opinions, the investigating judge has no right to substantiate court decisions with testimony given to the investigator or prosecutor, or to refer to them. The court may base its conclusions only on the testimony that he directly received during the hearing or which were obtained in the manner prescribed by Art. 225

Criminal Procedure Code, that is during the interrogation of a witness, a victim during the pre-trial investigation in court.

Considering the rules Art. 225 Criminal Procedure Code of Ukraine as a new institution – the interrogation of a witness or victim by an investigating judge during the pre-trial proceedings, the authors of scientific and practical commentary to the Criminal Procedure Code of Ukraine edited by V. Tatsiy, V. Pshonka and A. Portnov believes that its existence is an exception to the general rule of the immediacy of the study of evidence (Tatsiy *et al.*,, 2012).

Partially sharing this position, it should be noted, Part 1 Art. 225 Criminal Procedure Code of Ukraine provides for interrogation by an investigating judge in the presence of the parties to criminal proceedings, which allows both the investigating judge and the parties to personally take the testimony of a witness, the victim. Exceptions to the general rule on the presence of the parties to criminal proceedings are two cases specified in Part 1 Art. 225 Criminal Procedure Code of Ukraine: 1) non-arrival of the party, who was duly notified of the place and time of the court hearing, to participate in the interrogation; 2) the absence of a party to the defense, if at the time of the interrogation no person was notified of the suspicion in this criminal proceeding.

In these cases, the testimony of the witness, the victim is perceived directly by the investigating judge, and in respect of one or both parties to the criminal proceedings is limited to the principle of immediacy of the examination of testimony, things and documents.

The Supreme Court of Ukraine gives guidance to its decisions on the principle of immediacy and the procedure for its implementation (Resolution of the Supreme Court of 05.02.2019 in case № 127/23722/15-k), pointing to the need to apply Art. 23 Criminal Procedure Code in the work of the investigating judge. This is due to the fact that the immediacy of the perception of evidence makes it possible to properly investigate and verify them (both each piece of evidence separately and in conjunction with other evidence), to assess them according to the criteria set out in Part 1 Art. 94 Criminal Procedure Code, and to form a complete and objective view of the facts of a particular criminal proceeding.

Failure to comply with the principle of immediacy violates other principles of criminal procedure, including the presumption of innocence and proof of guilt, ensuring the right to defense, adversarial parties and freedom to present their evidence and to prove their persuasiveness before a court. Therefore, the principle of immediacy is an integral element of the procedural form of the trial, and its non-compliance with the court, given the content of Part 2 Art. 23 and Art. 86 Criminal Procedure Code, means that evidence that was not the subject of direct investigation of the court can not be considered admissible and taken into account in the court

decision, except as provided by this Code, and therefore the court decision in accordance with Art. 370 Criminal Procedure Code cannot be recognized as lawful and reasonable (Resolution of the Supreme Court of 12.02.2019 in case № 754/7061/15).

Thus, the basis for the evaluation of evidence and direct study of their sources, although perhaps, at first glance, unsystematic, but was laid by the legislator in the current Criminal Procedure Code of Ukraine. Using Art. 26 Criminal Procedure Code, which provides that the investigating judge in criminal proceedings decides only those issues that are submitted to him by the parties and referred to his powers Criminal Procedure Code, and the principle of adversarial, the content of which is disclosed in Art. 22 Criminal Procedure Code, the parties to criminal proceedings must apply for a direct examination of testimony, things and documents, as well as the recognition of evidence inadmissible to the investigating judge, without waiting for the latter's initiative. V. Nor and M. Shevchuk argue that regardless of the presence parties motions to the criminal proceedings, the investigating judge must decide to declare the evidence inadmissible in case of obvious signs of their inadmissibility (Nor and Shevchuk, 1945).

The basis for this is Part 4 Art. 193 Criminal Procedure Code, according to which at the request of the parties or on its own initiative, the investigating judge has the right to hear any witness or examine any material relevant to the issue of precautionary measures. In addition, Part 3 Art. 95 Criminal Procedure Code establishes the obligation of a witness / expert to testify to an investigating judge in the manner prescribed by this Code (Criminal procedure code of Ukraine, 2012).

Thus, the investigating judge is explicitly mentioned in the Code of Criminal Procedure as the subject of evaluation and direct examination of evidence in criminal proceedings. The need to establish during the judicial review the presence or absence of facts and circumstances relevant to criminal proceedings and subject to proof by direct examination of the sources of evidence and evaluation of evidence of relevance, admissibility, reliability, as well as the totality of evidence collected in terms of sufficiency and relationship for the adoption of the relevant procedural decision is not in doubt.

Otherwise, the investigating judge will not be able to perform the task of criminal proceedings and the actual function of judicial control and become a barrier to insolvent criminal proceedings, which already at the stage of pre-trial investigation do not contain substantiated / proved by appropriate, admissible and sufficient evidence of suspicion is the official beginning of bringing a person to criminal responsibility, as well as other circumstances, the proof of which is required by law. As a result, this will violate the requirements Art. 29 of the Constitution of Ukraine and Art. 370 Criminal Procedure Code. It will be recalled that the decision made on

the basis of objectively clarified circumstances, which is confirmed by the evidence examined during the trial and assessed by the investigating judge, in accordance with Art. 94 Criminal Procedure Code.

3.4. The judge's inner conviction during the examination and evaluation of evidence

The principle of immediacy of the examination of evidence provides for the possibility of a judge with the participation of the parties to the proceedings to conduct proceedings on the basis of personal and direct acquaintance, examination of evidence without the assistance of certain subjects of criminal proceedings or, as rightly noted by B. Tertyshnyk, «without any intermediate links» (Tertyshnyk, 2014).

The court is not entitled to substantiate court decisions with evidence that has not been directly investigated (heard, studied, verified) with the participation of the parties during the trial. It is clear that in adversarial proceedings the court does not collect evidence of guilt or innocence of the accused on its own initiative, but the obligation of the court to verify the evidence submitted by the parties is undeniable.

It is for this purpose in the adversarial process that the active role of the court can be traced, for example, in the appointment of expertise. Thus, Part 2 Art. 332 Criminal Procedure Code of Ukraine authorizes the court by its decision to entrust the examination to an expert institution, expert or experts, regardless of the petition, if the court provided several conflicting expert opinions, and interrogation of experts failed to eliminate the identified contradictions; during the trial there were grounds for an inpatient psychiatric examination. Thus, it can be concluded that in order to make a lawful, reasonable and fair decision, the court is obliged to take certain active actions on its own initiative to directly evaluate the evidence and perform its procedural function based on internal conviction (Girovich, 2015).

M. Strogovich considers the concept of «inner conviction of the judge» as a process of mental activity, an act of thinking associated with awareness of the circumstances of the case (Strogovich, 1968). V. Konovalova and V. Shepitko believes that the concept of «inner conviction» in its meaning expresses subjective confidence in accordance with the subjective assessment of objectively existing circumstances or facts. The subjectivity of inner conviction as its form not only does not exclude, but on the contrary, presupposes its objective meaning. Therefore, inner conviction is one of the forms of reflection of objective reality. As a reflection of objective reality in its content, inner conviction, according to scholars, does not play the role of a criterion for the truth of what is known in criminal proceedings. The criterion of truth in this area, as in all other areas of knowledge, according to scientists, is practice (Konovalova, 2005).

Yu. Orlov believes that inner conviction can act as a method of evaluating evidence and as a result. The scientist notes that «… in the case of impossible direct experimental verification of the conclusion, the subjective criterion often acts as one of the derivatives of objective, as a concentrated expression of collective experience, social practice. A similar function is performed by the inner conviction of the subjects of proof, which, on the one hand, is a method of evaluating evidence, and on the other – the result of this evaluation, one of the criteria for its correctness» (Orlov, 1981).

V. Tertyshnyk, notes that a judge's inner conviction is a state of consciousness of a judge, which reflects the result of his subjective mental activity in the process of evaluating evidence in order to reliably establish the facts of a particular criminal case, which is the subject of evidence decision (Tertyshnyk, 2014).

There is no doubt that during the criminal proceedings the judge conducts research activities, checking and evaluating the available evidence, the result of which is the reproduction of a fragment of reality, reconstruction of all the circumstances necessary for the court to decide during the court decision. Thus in the course of knowledge of factual circumstances of business the general laws of process of thinking which take place and in other spheres of a society come to light. Therefore, the evaluation of evidence as one of the stages of proof is a kind of mental activity.

Thus, in our opinion, the inner conviction of a judge should be considered as a complex phenomenon. It's not just an individual and subjective feeling of confidence. Of course, judges' beliefs are individual and subjective in the sense that they are made up of individuals who decide the case. But this legal category should not be considered unilaterally and only in psychological or only legal aspects in any case.

The convictions of judges are based primarily on their legal awareness, the whole set of views, ideas, sense of justice (as a subjective factor in the formation of internal convictions of judges), as well as their direct examination during the criminal proceedings, oral hearing of participants in criminal proceedings (as effective factor).

In administering justice, a judge is obliged to form an inner conviction not as a personal perception of certain phenomena of objective reality, but as a professional vision of the facts obtained as a result of procedurally appropriate and admissible actions. According to the case law of the European Court of Human Rights, it is worth noting that the difference between facts and evaluative judgments is that facts need to be proved and evaluative judgments do not. Thus, the formation an inner conviction of a judge during criminal proceedings will take place as a result of proving or disproving the facts enshrined in the procedural sources of evidence provided by the parties.

Conclusions

Summarizing the above, it should be noted that the principle of immediacy of research of testimony, things and documents in criminal proceedings structurally consists of two elements: personal perception of evidence by participants examining it, and justification of the decision by evidence examined and evaluated personally. The immediacy of the examination of evidence, carried out at the stages of pre-trial investigation and trial, are two independent forms of research, which have differences in nature.

The principle of direct examination of testimony, things and documents at the stage of pre-trial investigation imposes on the investigator, prosecutor, and in cases provided by the Criminal Procedure Code of Ukraine and the investigating judge, the obligation to directly examine the evidence. Immediacy in their examination of the evidence is that the investigator, prosecutor must: personally conduct in a particular criminal proceeding investigative (search) actions, and in cases provided by the Criminal Procedure Code of Ukraine – as well as covert investigative (search) actions, directly perceiving in the course of their proceedings, factual data that allow to establish the presence or absence of facts and circumstances that are relevant to the criminal proceedings and are subject to proof; make procedural decisions based on the assessment of personally perceived factual data.

The specificity of the implementation of the principle of immediacy of the study of testimony, things and documents is inherent in the stage of pre-trial investigation and is due to significant restrictions on the personal perception of evidence by the investigator, prosecutor. The range of such restrictions is quite wide and is determined both by the circumstances Criminal proceedings and the place where the criminal offense was committed, and by the powers of the prosecutor and the head of the pre-trial investigation body. At the same time, the existence of these restrictions does not affect the duty of the investigator, prosecutor to directly investigate, verify and evaluate all procedural evidence in the materials of a particular criminal proceeding when making procedural decisions.

At the stage of trial, the basic factor in the formation of the judge's own evaluation of evidence, along with the procedural conclusions obtained during the proceedings, is the so-called internal conviction, which is the perception and understanding of perceived information through the prism of knowledge of substantive and procedural law. that he gave a correct assessment of all the evidence available in the proceedings and that the conclusion he had drawn from the examination of all the issues was correct, complied with the requirements of law, justice and in no way restricted human rights.

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