

## THE EVIDENCE AND PROVING

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### ABSTRACT

This article provides reasoning according to certain logical rules, justifying the truth of any assumption, statement, hypothesis or theory. Also, the article about bringing (present) evidence (reasons, arguments, considerations), support with arguments, confirm, substantiate, argue, motivate; persuade, reason.

**Keywords:** evidence, proving, restorative, justice principles, interrogator, investigator, prosecutor.

### INTRODUCTION

Evidence in a criminal case is any factual data on the basis of which, in the manner prescribed by law, the body of inquiry, the investigator and the court establish the presence or absence of a socially dangerous act, the guilt of the person who committed this act, and other circumstances that are important for the correct resolution of the case.

These data are established by: testimony of a witness, victim, suspect, accused, defendant, expert opinion, material evidence, sound recordings, video recordings and film photography, protocols of investigative and judicial actions and other documents.

The results of operational-search measures can be recognized as evidence only if they are obtained in accordance with the requirements of the law, after their verification and assessment in accordance with the norms and indicate that the person has intent to commit a crime, formed regardless of the actions of the employee's law enforcement agencies or others who took part in the operational event.

### MAIN PART

Proof is a fact that confirms the truth of something. Irrefutable, compelling evidence. Provide evidence. His work presented scientific evidence for this assumption [2].

Proving consists in the collection, verification and assessment of evidence in order to establish the truth about the circumstances that are important for the legal, reasonable and fair resolution of the case.

Proofing is carried out by an inquiry officer, investigator, prosecutor, court.

The suspect, the accused, the defendant, the defense attorney, the public prosecutor, the public defender, as well as the victim, civil plaintiff, civil defendant and their representatives have the right to participate in the proof.

Witnesses, experts, specialists, translators, attesting witnesses, as well as other citizens and officials who, in accordance with the procedure established by this Code, exercise the rights and perform duties related to the collection, verification and assessment of evidence are involved in the proof.

Evidence in the case is information about the facts obtained in the manner prescribed by law, on the basis of which the court establishes the presence or absence of circumstances justifying the claims and objections of the parties, as well as other circumstances that are important for the correct consideration and resolution of the case [3].

Evidence is collected through the production of investigative and judicial actions: interrogation of the suspect, accused, defendant, witness, victim, expert; confrontation; presentation for identification; verification of testimony at the scene; notches; searches; inspections; surveys; exhumation of a corpse; experiments; obtaining samples for expert research; appointing examinations and audits; acceptance of the submitted items and documents; listening to conversations conducted from telephones and other telecommunication devices, removing information transmitted through them, as well as by carrying out operational-search measures.

The defense attorney has the right to collect and submit evidence in a criminal case, which must be attached to the materials of the criminal case, as well as mandatory assessment during the pre-investigation check, inquiry, preliminary investigation and consideration of the criminal case in court. This evidence can be collected by: interviewing persons with relevant information and obtaining written explanations with their

consent; sending a request and receiving certificates, characteristics, clarifications and other documents from government and other bodies, as well as enterprises, institutions and organizations.

When collecting, checking and evaluating evidence, the protection of the rights and legitimate interests of citizens, as well as enterprises, institutions and organizations must be ensured.

When proving it is prohibited:

- 1) Commit acts dangerous to the life and health of persons or humiliating their honor and dignity;
- 2) Solicit testimony, explanations, conclusions, experimental actions, production and issuance of documents or objects by violence, threats, deception and other illegal measures;
- 3) Carry out investigative actions at night, that is, from 22-00 to 6-00, except for cases when it is necessary to suppress an impending or ongoing crime, to prevent the possible loss of traces of a crime or the escape of a suspect, to reproduce the situation of the event being investigated during the experiment.
- 4) Induce a person to commit illegal actions and accuse him of a crime committed as a result of such inducement;
- 5) If there are grounds for bringing a person to participate in a criminal case as a suspect or an accused, interrogate him as a witness, except for cases requiring an examination or revision;
- 6) Receive any written or oral testimony from a person before clarifying his procedural rights;
- 7) Summon to law enforcement agencies and interrogate close relatives of the detained suspect or accused in the absence of grounds for involving them as participants in the process;
- 8) Employees of the bodies of inquiry and preliminary investigation to summon to the law enforcement bodies and (or) interrogate the participants in the trial in the framework of the criminal case sent to the court for consideration on the merits, except in cases where there is a criminal case related to them, separated into a separate proceeding, or written order of the court.

An interrogator, investigator, prosecutor, judge and other persons, except for doctors participating in the case as specialists or experts, are prohibited from being present when a person of the opposite sex is exposed in connection with the performance of an investigative or judicial action.

The interrogator, investigator, prosecutor, judge is obliged to take measures to not disclose the information revealed during the investigation and trial about the personal life of the suspect, accused, defendant, victim and other persons. For this, the circle of persons presents at the performance of an investigative or judicial action, during which such information may be revealed, is limited, and those present are warned of responsibility for their disclosure.

Objects and documents seized during investigative and judicial actions must be accurately described in the relevant protocols, and the owner of the object or document is handed a copy of the protocol or an extract from it against receipt. Items and documents not related to the case must be immediately returned to their rightful owners. Items and documents, the storage of which is prohibited to citizens, are subject to destruction or transfer to institutions or organizations authorized to store such items or documents and dispose of them.

To consolidate evidence, along with drawing up protocols, sound recording, video recording, filming, photography, making casts, impressions, plans, diagrams and other methods of displaying information can be used. To assist in the application of these methods of securing evidence, an inquiry officer, investigator, or a court may involve specialists.

## **CONCLUSION**

On the use by the inquiry officer, investigator, court, methods of securing evidence, a note is made, respectively, in the protocol of the investigative action or in the protocol of the court session, with the technical characteristics of the devices, devices, tools, materials used.

Investigative actions (interrogation, identification of persons and objects, face-to-face confrontation) with the participation of witnesses, victims, suspects and accused can be carried out using technical means in the videoconference mode, with a call to a law enforcement agency or court of that region or district or city, on territory of which they are located or live. During the videoconference, the participants of the investigative action in a live broadcast directly observe the progress and results of the investigative action.

The decision to carry out investigative actions in the mode of videoconferencing is taken by the inquiry officer, investigator, prosecutor or court on its own initiative or at the request of the participants in the criminal process.

Photographs, phonograms, videograms, films, casts, prints, plans, diagrams, other displays of the progress and results of the investigative or judicial action are attached to the protocol. Each appendix must have an explanatory inscription indicating the name, place, date of the investigative or judicial action to which the appendix relates. This inscription is certified by their signatures at the stage of inquiry and preliminary investigation by the inquirer or investigator and attesting witnesses, and in the court - by the presiding judge and secretary of the court session.

Participants in investigative actions, as well as parties in court proceedings, should be provided with the right to familiarize themselves with the protocols in which the course and results of these actions are recorded, as well as the right to make additions and corrections to the protocols.

Immediately after the end of the investigative action, the interrogator or investigator provides the participants in this action with the opportunity to read the protocol or, at their request, reads the protocol aloud. In the same manner, the presiding judge or, on his behalf, the secretary of the court session acquaints the participants of the judicial action performed outside the courtroom, as well as the parties, with the entries in the minutes of the court session relating to this judicial action.

Additions, corrections, remarks, objections, motions and complaints expressed orally are entered into the minutes, and those stated in writing are attached to the minutes. A reservation is made about the crossed out or inscribed words or other corrections before the signatures at the end of the protocol.

Persons familiar with the protocol of the investigative action put their signatures under each page of the protocol and at the end of it.

The decision on the case can only be based on evidence subjected to thorough, complete, comprehensive and objective verification. Verification consists in collecting additional evidence, which can be confirmed or refuted verifiable evidence.

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