

DOI: <https://doi.org/10.34069/AI/2021.46.10.28>

How to Cite:

Drozdov, O., Hryniuk, V., Kovalchuk, S., Korytko, L., & Kret, G. (2021). The standard of proof “beyond a reasonable doubt” in criminal proceedings of Ukraine in the context of the ECHR case-law. *Amazonia Investiga*, 10(46), 281-289. <https://doi.org/10.34069/AI/2021.46.10.28>

The standard of proof “beyond a reasonable doubt” in criminal proceedings of Ukraine in the context of the ECHR case-law

Стандарт доказування «поза розумним сумнівом» у кримінальному провадженні України в контексті прецедентної практики ЄСПЛ

Received: October 10, 2021

Accepted: November 12, 2021

Written by:

Oleksandr Drozdov¹⁰⁶<https://orcid.org/0000-0003-1364-1272>**Volodymyr Hryniuk**¹⁰⁷<https://orcid.org/0000-0002-6340-0584>**Serhii Kovalchuk**¹⁰⁸<https://orcid.org/0000-0001-6285-099X>**Liliia Korytko**¹⁰⁹<https://orcid.org/0000-0002-3812-205X>**Galyna Kret**¹¹⁰<https://orcid.org/0000-0002-4906-4799>

Abstract

The purpose of the paper is to determine a content of the standard of proof “beyond a reasonable doubt” (SP “BRD”) in the ECHR case law and Ukrainian criminal proceedings by defining the criteria that characterize it. The subject is the SP “BRD”, doctrine of Ukraine and case-law, including its criticism by the individual judges of the ECHR and Ukrainian scholars. The research methodology includes the methods of analysis, the method of synthesis, the methods of deduction and induction, comparative-legal method, systematic and formal-legal methods. The results of the study. The acceptability of the SP “BRD” in the Ukrainian criminal proceedings is substantiated, in particular, its compliance with the purpose of criminal procedural proof. Practical implication. The criteria which characterize the SP “BRD” in the ECHR’s and SC’s case law are highlighted.

Анотація

Метою статті є визначення змісту стандарту доказування «поза розумним сумнівом» (СД «ПЗС») у судовій практиці Європейського суду з прав людини та в кримінальному провадженні України шляхом визначення критеріїв, які його характеризують. Предметом дослідження є аналіз СД «ПЗС» у судовій практиці ЄСПЛ, українському кримінально-процесуальному законодавстві, доктрині України та судовій практиці, включаючи критику окремих суддів ЄСПЛ та українських науковців. Методологія дослідження включає метод аналізу, метод синтезу, методи дедукції та індукції, порівняльно-правовий, системний та формально-правовий методи. Результати дослідження. Обґрунтовано прийнятність СД «ПЗС» у кримінальному провадженні в Україні, зокрема, визначено його відповідність меті кримінально-процесуального доказування. Практичний підтекст. Висвітлено критерії, які характеризують СД «ПЗС» у судовій практиці ЄСПЛ та ВС.

¹⁰⁶ Doctor of Laws, Associate Professor, Honored Lawyer of Ukraine, President, Lawyers Union of Ukraine, Ukraine.

¹⁰⁷ Doctor of Laws, Associate Professor, First Deputy Minister, Ministry of Economy of Ukraine, Ukraine.

¹⁰⁸ Doctor of Laws, Professor, Head of the Department of Criminal Proceedings and Criminalistics of Ivano-Frankivsk Law Institute, National University “Odessa Law Academy», Ukraine.

¹⁰⁹ Doctor of Laws, Associate Professor, Head of the Department of General Legal and Human Sciences of Ivano-Frankivsk Law Institute, National University “Odessa Law Academy», Ukraine.

¹¹⁰ Doctor of Laws, Associate Professor, Judge of Grand Chamber, Supreme Court, Kyiv, Ukraine.

Keywords: standards of proof, beyond a reasonable doubt, burden of proof, criminal proceedings, ECHR.

Introduction

The SP “BRD” is relatively new legal phenomenon for criminal procedural legislation and case law of the Romano-German legal system. The general recognition and proclamation of human and civil rights and fundamental freedoms in Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and the establishment on its basis of the European Court of Human Rights (hereinafter – the ECHR) as an international judicial institution had determining influence on its formation and further implementation in the criminal proceedings of these countries.

In the ECHR’s case law the SP “BRD” is considered, on the one hand, as the obligation of the prosecution to prove the guilt of the accused and, on the other, as the duty of the relevant court to convict the accused only when his guilt in the commission of the crime has been proven beyond a reasonable doubt. A similar interpretation of this standard of proof incorporated in criminal procedural legislation and applied in the case law of a number of countries. While the legislation and case law of each country have different definitions of content of the SP “BRD” and its practical application.

Theoretical Framework or Literature Review

The SP “BRD” had been a study subject of a considerable number of scholars whose scientific writings had been revealed its historical origins and evolution (Waldman, 1959; Shapiro, 1991; Whitman, 2008), the concept, content of this standard in the Anglo-Saxon legal system (Simon, 1970; Morano, 1975; Davidson, Pargetter, 1987; Mulrine, 1997; Sheppard, 2003). A number of scholars had addressed the issues of the SP “BRD” in the countries of the Romano-Germanic legal system, in particular, they had defined its concept, content and scope of application in the Ukrainian criminal proceedings (Beznosyuk, 2014; Tolochko, 2015; Slyusarchuk, 2017; Stepanenko, 2017). The analysis of the scientific writings of these scientists demonstrates the thoroughness of the development of legal and practical frameworks of the SP “BRD” in the procedural legislation of both the Anglo-Saxon and the Romano-German legal system (in particular Ukraine as a country

Ключові слова: стандарти доказування, поза розумним сумнівом, тягар доказування, кримінальне провадження, Європейський суд з прав людини.

as one of the countries of the Romano-German legal system).

Application of the SP “BRD” in the ECHR’s case law had been a study subject in the scientific writings of a number of scholars. At the same time, the practical aspects of its application had been revealed by them in a fragmented manner in the context of other research issues (Claude, 2010; Wilkinson, 2012; Stepanenko, 2017; Vapniarchuk, Trofymenko, Shylo, Maryniv, 2018; Bicknell, 2019; Gunn, 2020; Tuzet, 2021). Mačkić (2017) in the research of the standards of proofs considered them central to the prevention of arbitrary violations of individual liberty and false accusations. In the absence of standards of proof, it would not be possible to assess the rationality or fairness of decisions that have serious consequences for individuals, society and the state. In addition, standards of proof must be set out in the prescribed legal requirements and adapted to the specific requirements of the jurisdiction in which they operate and the specifics of the case in which they are applied.

In his turn Clermont believes that in common law countries, the existence of a system of interrelated standards of proof is obvious. Clermont states: “what is unique in science, in practice is divided into three different standards (the author calls them “magic number three”) - “the superiority of evidence” (“balance of probabilities”), “clear and convincing evidence” and “BRD” (Clermont, 1987, p. 1115).

However, the SP “BRD” in Ukraine in the context of the ECHR’s case-law was not the subject of a separate scientific study.

Methodology

The methodology of this study is based on traditional methods of cognition of objective reality.

These methods include both general philosophical ways of knowing legal phenomena, and ways of knowing objective reality, inherent only in legal science.

Thus, the method of analysis allowed to investigate in detail the peculiarities of the

application of the SP “BRD” by the ECHR, in particular, in the interaction of all its components and taking into account the different approaches to this issue.

Further the method of synthesis allowed to thoroughly study the SP “BRD” in the combination of its individual components, which allowed us to conclude on the adequacy of its application in the practice of the ECHR. Closely related to the methods of analysis and synthesis are such widespread methods of scientific cognition as methods of induction and deduction.

In particular, the method of induction led to the conclusion that the application of identical approaches to the understanding of the SP “BRD” at the level of the ECHR and at the national level is unfounded, as the general principles of the ECHR are fundamentally different from the principles of national law enforcement. In turn, the method of deduction, as a method of transition from knowledge of general patterns to its individual manifestation, allowed to make reasonable conclusions about the possibility of applying the SP “BRD” in each case of harming the rights and interests of complainants in the ECHR.

The comparative-legal method was used for the analysis of the content of the SP “BRD”. The systematic method made it possible to identify the elements of content of this standard of proof in the ECHR’s and Supreme Court’s (hereinafter – the SC) case law.

Finally, the formal-legal method helped to trace the connections of the studied legal phenomenon in their interaction. In particular, the authors analyzed from the point of view of the dogma of law all the constituent elements of the SP “BRD”.

Results and Discussion

The SP “BRD” in the ECHR’s case-law

Provisions of the Convention and the Rules of Court in new edition entered into force on 1 August 2021 (like previous editions of this Rules) did not indicate the SP “BRD”. This standard of proof, however, is widely used the ECHR’s case law.

The SP “BRD” originally was used by European Commission of Human Rights (EComHR) in the so-called “Greek Case” in the context of establishing the facts of torture and ill-treatment. In the report of the Sub-Commission of EComHR of 05.11.1969 held in this case that the

SP “BRD” it adopted when evaluating the material, it had obtained was proof “beyond a reasonable doubt” (Yearbook, 1972). For the Commission, the allegation of torture and ill-treatment as a violation of Article 3 of the Convention, in each case, shall be proven beyond a reasonable doubt. A reasonable doubt means a doubt based not only on a theoretical possibility, or which arises only on the basis of avoiding an unwanted conclusion, but such for which grounds may be given and these grounds can be substantiated by the facts as submitted (Stepanenko, 2017).

The SP “BRD” further has been used by European Commission of Human Rights in reports in other cases during the establishment of the fact of compliance Article 3 of the Convention. Thus, in the case of “Ireland v. the United Kingdom”, as in the “Greek Case”, the Commission, used the SP “BRD” in assessing the significance of the collected data. In considering the case, the ECHR agreed with the Commission’s approach on the understanding of this standard of proof (Ireland v. the United Kingdom, 1978).

In establishing the fact of compliance Article 3 of the Convention ECHR makes extensive use of the SP “BRD” (Avşar v. Turkey, 2001; Korobov v. Ukraine, 2011; ECHR, Nechiporuk and Yonkalo v. Ukraine, 2011).

Injuries sustained to the complainant during his detention in the ECHR’s case law is regarded as sufficient ground for similar unrebutted presumptions of fact. (Suptel v. Ukraine, 2009). The burden of proof is on the Government to prove the circumstances of the complainant’s injuries in this case (Pomilyayko v. Ukraine, 2016) and arguments that establish the facts, that call into question the complainant’s allegations, especially if this allegations are supported by several medical certificates containing precise and concordant information (Selmouni v. France, 1999).

Confirmation of the complainant’s injuries during his detention and the absence of substantiated explanations by the Government as to their origin are grounds for the ECHR to find a violation of Article 3 of the Convention. Thus, it noted that given the seriousness of the applicant’s injuries and the absence of any other explanations as to their origin, the Court concludes that the applicant was subjected to inhuman treatment by State agents. There has accordingly been a violation of the substantive

limb of Article 3 of the Convention (Rudyak v. Ukraine, 2014).

Subsequently, the ECHR began to gradually moved away from the use of the SP “BRD” exclusively for the purpose of establishing the fact of compliance Article 3 of the Convention. In particular, the ECHR used this standard of proof during the assessment of evidence to establish the fact of violation of Article 2 (Salman v. Turkey, 2000), of Article 3 (Judgment No. 53157/99, 53247/99, 53695/00 and 56850/00, 2006), as well as comprehensively of Articles 2, 3, 5, 6, 8 and 13 of the Convention (Şeker v. Turkey, 2006).

Along with this, in the ECHR’s case law, the burden of proof gradually shifted from the Government to the applicant (Şeker v. Turkey, 2006).

The departure of the burden of proof on the Government resulted in a finding of a violation of the Convention on the basis of the ECHR’s assessment of the totality of the available evidence. (Labita v. Italy, 2000; Naumenko v. Ukraine, 2004).

Criticism of the SP “BRD” by the individual judges and its role in the ECHR’s case law

The SP “BRD” has been strongly criticized by some ECHR’s judges in two main directions.

Firstly, it is related to the unreasonableness of the Court placing the burden of proof on the applicant. The judges in the case No. 26772/95 stated that this principle is inadequate, as it deprives the ability to establish all the facts of the event. (Labita v. Italy, 2000). A similar position is expressed by the judge Maruste who in the Dissenting opinion in the case of “Kozinets v. Ukraine” stated that the burden lies in such situations on the respondent Government, which have to show “beyond a reasonable doubt” that the injuries were not caused by State agents (Kozinets v. Ukraine, 2007).

Secondly, such criticism is related to the Court’s failure to take into account the differences between the content of the SP “BRD” it applies and the content of a similar standard used in the practice of national courts. The judges Pastor Ridruejo, Bonello, Makarczyk, Tulkens, Strážnická, Butkevych, Casadevall та Zupančič in the above Joint partly dissenting opinion stated that the standard of proof "beyond any reasonable doubt" cannot be applied equally in national courts and in the ECtHR (Labita v. Italy,

2000). Insisting on this viewpoint the judge Bonello in the Partly dissenting opinion in the case of “Sevtap Veznedaroğlu v. Turkey” recognized that the SP “BRD” is legally untenable (Sevtap Veznedaroğlu v. Turkey, 2000).

Partly in response to this criticism, the ECHR has gradually begun to move away from the established understanding of the SP “BRD” and pointed to its autonomous value (Nachova and Others v. Bulgaria, 2005). Summarizing this position, the ECHR indicated that it is not bound by the rules of application of this principle by national courts (Mathew v. the Netherlands, 2005).

The SP “BRD” in criminal procedural legislation and doctrine of Ukraine

In Ukrainian criminal procedural legislation the SP “BRD” was first regularized in the Criminal Procedural Code of Ukraine in 2012 (Law No. 4651-VI, 2012) (hereinafter – the CPC of Ukraine), in accordance with Part 2 of Art. 17 of which no one shall be required to prove their innocence of having committed a criminal offence and shall be acquitted unless the prosecution proves their guilt beyond any reasonable doubt (Law No. 4651-VI, 2012). Thus, the legislator does not define the concept of this standard of proof and attributes it solely to establishing the guilt of the accused and places the burden of proof on the prosecution. While sharing this position in general, it should be pointed out that there is no need for a normative statement of the concept of the SP “BRD”. It is an evaluation concept and is therefore defined by the subjects of evidence in criminal proceedings in the light of their specific circumstances. However, existence of a scientific definition of this standard of proof facilitates disclosure of its content.

In Ukrainian criminal procedural doctrine, the concept of the SP “BRD” is determined by identifying its general features which reveal its essence and distinguish it from other standards of proof. Scholars recognize such signs of this standard of proof:

- 1) it shows the level of certainty of information on the conditions of the proceedings to be achieved by the subject of proof;
- 2) it makes it possible to achieve the necessary level of certainty based on a satisfactory body of relevant, fair, and reliable evidences;

- 3) it is used for a procedural decision to find the accused guilty or not guilty of committing a criminal offense (Kret, 2020).

The level of certainty of data about the conditions of the proceedings, which the subject of proof must have in order for the said procedural decision to be taken, can be achieved solely through the reasonableness of the doubt. The criminal procedural doctrine it has two characteristics: reasonableness and irrefutability. The level of reliability of data about the conditions of the proceedings, which should be achieved by the subject of proof to make this procedural decision, can be achieved only through the reasonableness of doubt. In criminal procedural doctrine it is characterized by two properties: validity and irrefutability (Slyusarchuk, 2017). The validity indicates that the doubt have been raised on the basis of objectively clarified circumstances which are confirmed by the evidences assessed following Art. 94 of the CPC of Ukraine, and does not contain assumptions about these circumstances. The irrefutability is that the doubt cannot be overcome by the results of the assessment of the available body of evidences, but allows a procedural decision to be made according to the SP “BRD”.

The introduction of the SP “BRD” in Ukrainian criminal procedural legislation gave rise to a lively debate among scholars, some of whom pointed to its inadmissibility and difference between its content and the content of the relevant standard of proof formed in the criminal proceedings in the countries of the Anglo-Saxon legal system. The criticism of this standard has focused on two aspects:

- 1) its incompatibility with the establishment of the objective truth as the purpose of criminal procedural proof (Slyusarchuk, 2017);
- 2) the impossibility to reconcile it with the internal conviction of the subjects of proof as a result of the assessment of evidences (Stepanenko, 2017).

However, such criticism is untenable, given the following. First, the theory of the aim of procedural proof has been reconsidered in Ukrainian procedural doctrine and today it is linked to the credibility of the knowledge acquired about the circumstances of criminal proceedings, rather than to its truth. Since the purpose implies the existence of certain reasonable probabilities, such probabilities should in any case be based on the SP “BRD”. The fact that the prosecution has proved the

circumstances of the criminal proceedings is an objective aspect of this standard of proof. In this regard the SP “BRD” fully corresponds to the theoretical understanding of its purpose formed in the modern criminal procedural doctrine. Second, the SP “BRD” deepens the inner conviction of the subject of proof in the credibility of the evidences and the sufficiency of their body for a procedural decision to which a person is found guilty or not guilty of committing a criminal offence. The formation, through the SP “BRD”, of the internal conviction of the subject of proof regarding the details of the criminal proceedings, that prove the guilt or innocence of the arrested and are sufficient to make a relevant procedural decision, is a subjective aspect of this standard of proof. The above demonstrates the validity of the introduction of the SP “BRD” in Ukrainian criminal procedural legislation and its consistency with the purposes of proof and with the inner conviction of the subjects of proof.

The SP “BRD” in Ukrainian case law

The SP “BRD” is widely used in the Supreme Court (hereinafter – the SC) case law and its legal positions formed the basis for its correct understanding (Judgment No. 493/1616/16-k, 2019). This standard of proof provides for the inner conviction of the court that, first, whether a criminal offence has occurred, and second, that a criminal offence has been committed by the accused. In this aspect, the SP “BRD” only applies to the circumstances to be proved in criminal proceedings, which are specified in par. 1, 2 of p.1, Art. 91 of CPC of Ukraine.

Taking into account the set of circumstances covered by par. 1, 2 of p. 1 of Art. 91 of CPC of Ukraine, the SC noted, “beyond a reasonable doubt” must be proved each of the elements that are important for the legal qualification of the act: both those that form the objective side of the act and those that determine its subjective side (Judgment No. 688/788/15-k, 2018). In this connection, the SC pointed out that BRD must be proved all the circumstances which in view of Art. 91 of the CPC of Ukraine belong to the subject of proof and have legal significance for the correct qualification of the act (Judgment No. 755/2324/13-k. 2019).

From the standpoint of the SC, proof of a person’s guilt BRD may be established solely on the basis of the body of the evidences examined during the trial. Thus, SC indicated that the courts should be guided by the SP “BRD” in determining whether the evidences established

during the trial is sufficient to establish guilt (Judgment No. 154/2906/15, 2019). While both the evidences provided by the prosecution and the evidences provided by the defense are subject to assessment. Thus, the SC noted that the issue of proof BRD of every elements that are important for the legal qualification of the act should be resolved on the basis of an impartial and unbiased analysis of admissible evidences which provided by the prosecution and the defense and which testify for or against certain version of event (Judgment No. 653/1302/15-k, 2019). However, on the basis of the principle of the freedom to assessment the evidences, the court may not take into account some of the evidences and state in the sentence the reasons for such decision. As indicated by the SC, the provisions of Article 62 of the Constitution of Ukraine formulate an appropriate standard for proving a person's guilt in a court on the basis of an assessment of the body of evidences, but they does not prohibit a court from stating in a court decision the reasons for accepting or rejecting certain evidences, taking into account or disregarding certain facts or circumstances (Judgment No. 551/257/16-k, 2018).

In the light of the provisions of part 2 of Article 17 and Article 92 of the CPC of Ukraine, the SC drew attention to the fact that the burden of proof is on the prosecutor (Judgment No. 127/23722/15-k, 2019), therefore, the prosecution must prove the person's guilt BRD (Judgment No. 154/3431/15, 2018). Following the principles of competitiveness and fulfilling its professional duty under Article 92 of the CPC of Ukraine, the prosecution must prove before the court, by means of appropriate, admissible and credible evidences, that there is only one version in which a smart and impartial person can explain the facts established in the court, namely, the guilt of a person in the commission of a criminal offence, of which he or she is charged (Judgment No. 335/435/13-k, 2019).

The SC pointed out that the duty of a full and impartial examination by the court of all the circumstances of the case in this context means that in order to be proved beyond a reasonable doubt, the prosecution's version must explain all circumstances which the court has established. The court cannot ignore that part of the evidence and the circumstances established on its basis simply because it contradicts the prosecution's version. The existence of such circumstances, which the prosecution's version is unable to provide a reasonable explanation or which would indicate the possibility of another version of the incriminated event, constitutes a reasonable

doubt as to the proof of guilt (Judgment No. 342/1121/16-k, 2018). Accordingly, from the standpoint of the SC, in order to comply with the SP "BRD", it is not enough that the prosecution's version was only more likely more likely than the defense's version. The legislator requires that any doubt in the prosecution's version be disproved by facts established on the basis of evidences, and the only version according to which an impartial person can explain the facts established in court is the version of events that gives rise to the conviction of the person charged (Judgment No. 335/5044/16-k, 2019).

During the trial, the defense may offer a version of the innocence of the accused of a criminal offence or of his lesser guilt. From the SC's point of view, such version must be refuted by the prosecution with the facts established on the basis of the evidence. According to the SC, if the defense suggests that the preparatory acts, which are imputed to the convicted person and not unrelated to intent to commit the alleged offence, were carried out for another purpose, the prosecution must provide evidences which BRD refutes such version (Judgment No. 372/4155/15-k, 2018).

In the event that the defense's version was not refuted by the prosecution during the trial in the courts of first instance and on appeal, the SC in accordance with paragraph 2 of part 1 of Article 436 and Article 438 of the CPC of Ukraine has the power to reverse the court decision and assign a new trial in the court of first or appellate instance. In particular, the SC noted that the convicted person did not deny his guilt in the murder, but claimed that he committed it solely through a long-term disliked relationship with the victim and her constant insults. In these circumstances, it was for the courts to determine whether the prosecution had established BRD that the convict's mercenary motive caused the accused's actions aimed at killing the victim as well as the courts have to determine whether the prosecution's evidences refutes the convict's version of the event (Judgment No. 131/370/17, 2017).

Proof of a person's guilt BRD defined by the SC as a prerequisite for a conviction. In particular, it noted that a conviction is only handed down by a court when the guilt of the accused has been proven BRD (Judgment No. 333/2712/16-k, 2019). This position is based on the norm of p. 3 of Art. 373 of the Criminal Procedure Code of Ukraine: the judgment of conviction may not be grounded on assumptions and shall be delivered only provided that the guilt of the commission of

criminal offence was proved in the course of trial. According to the SC, the court's finding of guilt must be based on the firm belief that the evidences adduced by the parties together proves the guilt of the person "beyond a reasonable doubt". Conversely, a court's finding of guilt cannot be based solely on the assumption that the person may have committed a criminal offence if, in the light of the circumstances or the evidences, there is a reasonable doubt in that regard (Judgment No. 551/257/16-k, 2018). In the event that the guilt of a person is not proved beyond a reasonable doubt, the court according to part 1 of Article 373 of the CPC of Ukraine have to order an acquittal.

Conclusions

The SP "BRD" is the common heritage of the ECHR's case law. Gradually evolving, it has now formed as the standard of proof, which has an autonomous meaning. The ECHR reveals a content of the SP "BRD" using such criteria:

- 1) this standard of proof is to be used in assessing evidences;
- 2) such evidence may be recognized by the court on the basis of irrefutable presumptions of a certain fact;
- 3) the obligatory condition is to take into account the behavior of the parties during the collection of evidence;
- 4) the burden of proof is on the Government, but it gradually shifted from the Government to the applicant.

In Ukrainian criminal proceedings, the SP "BRD" is the rule reflecting the certainty of information on the conditions of the proceedings, which must be achieved by the subject of proof on the basis of an enough body of relevant, fair, and reliable evidences, to make a procedural decision to find the accused guilty or not guilty of committing a criminal offense. A content of the SP "BRD" is shown in the SC's case law in which it is characterized by the following criteria:

- 1) the prosecution must prove BRD before the court, by means of a sufficient body of appropriate, admissible and credible evidences, examined during the trial, the guilt of the accused in the criminal offence, including each of the elements which form an objective and subjective parts of the act and are important for its legal qualification;
- 2) the prosecution's version, by explaining all the circumstances determined by the court and relevant to the criminal proceedings, and

this version must exclude reasonable doubt about proving the guilt of an accused person in committing a criminal offence, including by disproving other versions of the incriminated event;

- 3) in the event of doubt in the prosecution's version on the guilt of the accused in the committing a criminal offence, it must be refuted by facts established on the basis of evidences;
- 4) in the event that the defense is satisfied that the defendant is not guilty in the committing a criminal offence or he or she is less guilty, such version must be refuted by the prosecution by facts established on the basis of the evidences;
- 5) in the event that the guilt of a person is not proved beyond a reasonable doubt, the court have to order an acquittal.

Bibliographic references

- Avşar v. Turkey, Judgment No. 25657/94 (ECHR 2001).
- Beznosyuk, A. (2014). Proof BRD and reliability as the standard of proving in criminal proceedings of Ukraine. *Court appeal*, 3, 23-28.
- Bicknell, C. (2019). Uncertain Certainty?: Making Sense of the ECHR' Standard of Proof. *International Human Rights Law Review*, 8(2), 155–187. DOI: Recovered from <https://doi.org/10.1163/22131035-00802001>
- Claude, O. (2010). A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the ECHR Jurisprudence. *Intercultural Human Rights Law Review*, 5, 407–462. Recovered from <https://www.stu.edu/portals/law/docs/human-rights/ihr/r/volumes/5/407-462-opheliaclaude-comparativeapproachtoenforceddisappearancesintheinter-americancourtofhumanrightsandtheeuropeancourtofhumanrightsjurisprudence.pdf>
- Clermont K.M. (1987). *Procedure's Magical Number Three: Psychological Bases for Standards of Decision*. Cornell Law Faculty Publications, 1115 – 1155.
- Davidson, B., & Pargetter R. (1987). Guilt beyond a reasonable doubt. *Australasian Journal of Philosophy*, 65(2), 182–187. Recovered from <https://doi.org/10.1080/00048408712342861>
- Gunn, T.J. (2020). Limitations Clauses, Evidence, and the Burden of Proof in the ECHR. *Religion and Human Rights*, 15(1-2),

- 192–206. DOI: 10.1163/18710328-
BJA10007
- Ireland v. the United Kingdom, Judgment
No. 5310/71 (ECHR 1978).
- Judgment No. 127/23722/15-k. Appeal for
Cassation / 51-6717 km 18 (Supreme Court
2019).
- Judgment No. 131/370/17. Appeal for Cassation
/ 51-708 km 17 (Supreme Court 2017).
- Judgment No. 154/2906/15. Appeal for
Cassation / 51-6913 km 18 (Supreme Court
2019).
- Judgment No. 154/3431/15. Appeal for
Cassation / 51-3969 km 18 (Supreme Court
2018).
- Judgment No. 333/2712/16-k. Appeal for
Cassation / 51-6776 km 18 (Supreme Court
2019).
- Judgment No. 335/435/13-k. Appeal for
Cassation / 51-7592 km 18 (Supreme Court
2019).
- Judgment No. 335/5044/16-k. Appeal for
Cassation / 51-2641 km 18 (Supreme Court
2019).
- Judgment No. 342/1121/16-k. Appeal for
Cassation / 51-682 km 18 (Supreme Court
2018).
- Judgment No. 372/4155/15-k. Appeal for
Cassation / 51-941 km 18 (Supreme Court
2018).
- Judgment No. 493/1616/16-k. Appeal for
Cassation / 51-6717 km 18 (Supreme Court
2019).
- Judgment No. 551/257/16-k. Appeal for
Cassation / 51-2713 km 18 (Supreme Court
2018).
- Judgment No. 653/1302/15-k. Appeal for
Cassation / 51-3696 km 18 (Supreme Court
2019).
- Judgment No. 688/788/15-k. Appeal for
Cassation / 51-597 km 17 (Supreme Court
2018).
- Judgment No. 755/2324/13-k. Appeal for
Cassation / 51-2047 km 18 (Supreme Court
2019).
- Korobov v. Ukraine, Judgment No. 39598/03
(ECHR 2011).
- Kozinets v. Ukraine, Judgment No. 75520/01
(ECHR 2007).
- Kret, G. (2020). International Standards of Proof
in the Criminal Proceedings of Ukraine:
Theoretical, Legal and Practical
Fundamentals. Ivano-Frankivsk: Goliney.
- Labita v. Italy, Judgment No. 26772/95 (ECHR
2000).
- Law No. 4651-VI, Criminal Procedural Code of
Ukraine. Bulletin of the Verkhovna Rada of
Ukraine, Kyiv, Ukraine, April 4, 2012.
Recovered from
[https://zakon.rada.gov.ua/laws/show/4651-
17#Text](https://zakon.rada.gov.ua/laws/show/4651-17#Text)
- Ledyayeva, Dobrokhotova, Zolotareva and
Romashina v. Russia, Judgment
No. 53157/99, 53247/99, 53695/00 and
56850/00 (ECHR 2006).
- Mačkić, J. (2017). Proving discriminatory
violence at the ECHR. Leiden University.
273 p
- Mathew v. the Netherlands, Judgment No.
24919/03 (ECHR 2005).
- Morano, A. (1975). A Reexamination of the
Development of the Reasonable Doubt Rule.
Boston University Law Review, 55(4), 507–
528.
- Mulrine, T.V. (1997). Reasonable Doubt: How in
the World Is It Defined? American University
International Law Review, 12(1), 195–225.
Recovered from
[https://digitalcommons.wcl.american.edu/aur/
vol12/iss1/4/](https://digitalcommons.wcl.american.edu/aur/vol12/iss1/4/)
- Nachova and Others v. Bulgaria, Judgment No.
43577/98 and 43579/98 (ECHR 2005).
- Naumenko v. Ukraine, Judgment No. 42023/98
(ECHR 2004).
- Nechiporuk and Yonkalo v. Ukraine, Judgment
No. 42310/04 (ECHR 2011).
- Pomilyayko v. Ukraine, Judgment No. 60426/11
(ECHR 2016).
- Rudyak v. Ukraine, Judgment No. 40514/06
(ECHR 2014).
- Salman v. Turkey, Judgment No. 21986/93
(ECHR 2000).
- Şeker v. Turkey, Judgment No. 52390/99 (ECHR
2006).
- Selmouni v. France, Judgment No. 25803/94
(ECHR 1999).
- Sevtap Veznedaroğlu v. Turkey, Judgment
No. 32357/96 (ECHR 2000).
- Shapiro, B.J. (1991). BRD and Probable Cause:
Historical Perspectives on the
Anglo-American Law of Evidence. Berkeley:
University of California Press. Recovered
from
<http://ark.cdlib.org/ark:/13030/ft409nb30v/>
- Sheppard, S. (2003). The Metamorphoses of
Reasonable Doubt: How Changes in the
Burden of Proof Have Weakened the
Presumption of Innocence. Notre Dame Law
Review, 78(4), 1165–1249. Recovered from
[https://scholarship.law.nd.edu/ndlr/vol78/iss
4/5](https://scholarship.law.nd.edu/ndlr/vol78/iss4/5)
- Simon, R.J. (1970). BRD— An Experimental
Attempt at Quantification. Journal of Applied
Behavioral Science, 6(2), 203–209.
Recovered from
[https://doi.org/10.1177/00218863700060020
5](https://doi.org/10.1177/002188637000600205)



- Slyusarchuk, Kh.R. (2017). Standards of proof in criminal proceedings (the doctoral thesis). Ivan Franko National University of Lviv, Lviv.
- Stepanenko, A.S. (2017). SP “BRD” in criminal proceedings (the doctoral thesis). National University “Odesa Law Academy”, Odesa.
- Suptel v. Ukraine, Judgment No. 39188/04 (ECHR 2009).
- The European Commission and ECHR. (1972). Yearbook of the European Convention on Human Rights The Greek Case. The Hague: Martinus Nijhoff. Recovered from <https://link.springer.com/content/pdf/bfm%3A978-94-015-1224-4%2F1.pdf>
- Tolochko, O. (2015). Criteria for Setting Standard of Proof of Guilt BRD in Criminal Proceedings. Journal of the National Prosecution Academy of Ukraine, 4, 5-10.
- Tuzet, G. (2021). Evidence Assessment and Standards of Proof: a Messy Issue. Quaestio facti. International Journal on Evidential Legal Reasoning. Seccion: Ensayos, 2, 87–113. Recovered from <https://dugi-doc.udg.edu/handle/10256/19274>
- Vapniarchuk, V., Trofymenko, V., Shylo, O., & Maryniv, V. (2018). Standards of Criminal Procedure Evidence. Journal of Advanced Research in Law and Economics, IX(7), 2472–2480.
- Waldman, T. (1959). Origins of the Legal Doctrine of Reasonable Doubt. Journal of the History of Ideas, 20(3), 299–316.
- Whitman, J.Q. (2008). The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial. Yale: Yale University Press. Recovered from https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1000&context=fss_papers
- Wilkinson, S. (2012). Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions. Geneva Academy of International Humanitarian Law and Human Rights, 1, 65-69. Recovered from <https://www.geneva-academy.ch/joomlatools-files/docman-files/Standards%20of%20Proof%20in%20Fact-Finding.pdf>