

Artículo de investigación

Standards of proof in the criminal procedure of the United States of America and Ukraine: A comparative research**СТАНДАРТИ ДОКАЗУВАННЯ В КРИМІНАЛЬНОМУ ПРОЦЕСІ СПОЛУЧЕНИХ ШТАТІВ АМЕРИКИ ТА УКРАЇНИ: ПОРІВНЯЛЬНЕ ДОСЛІДЖЕННЯ****Normas de prueba en el procedimiento penal de los Estados Unidos de América y Ucrania: Una investigación comparativa**

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Abstract

The purpose of the paper is disclosure of the concept, features of the formation of the system and mechanism of application of the standards of proof in the criminal procedure of the common law and continental legal systems (on the example of the USA and Ukraine). In result of the research, the concept, features of the system and the mechanism of application of the standards of proof in the criminal procedure of the USA and Ukraine were compared, which revealed the similarities and differences between them. According to the results of the research of the concept of the standards of proof in the criminal procedure of the USA and Ukraine, their signs were distinguished, which made it possible to conclude that their concept is approximated in the criminal procedure doctrine of the mentioned countries. In the criminal procedure both the USA and Ukraine, the standards of proof reflect the requisite level of knowledge about the facts and circumstances of criminal proceedings that a decision-maker must reach to make it. The differences in the formation of the system of the standards of proof in the criminal procedure of the USA and Ukraine were established. In the criminal procedure of the USA, they were formed

Анотація

Мета статті полягає у розкритті концепції, особливостей формування системи та механізму застосування стандартів доказування у кримінальному процесі загальноправової та континентальної правової систем (на прикладі США та України). В результаті проведеного дослідження співставлено поняття, особливості системи та механізм застосування стандартів доказування у кримінальному процесі США та України, що дозволило виявити схожість та відмінності між ними. Вивчення концепцій стандартів доказування у кримінальному процесі США та України сприяло виділенню їх ознак, на підставі яких зроблено висновок про наближеність цих концепцій у кримінально-процесуальній доктрині даних країн. У кримінальному процесі як США, так і України стандарти доказування відображають необхідний рівень знань про факти та обставини кримінального провадження, яких повинна досягти уповноважена на прийняття рішень особа. Встановлено відмінності у формуванні системи стандартів доказування у

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in the judicial practice and subsequently reflected in the Model Code of Criminal Procedure. In the criminal procedure of Ukraine, they first gained regulatory support in the Criminal Procedure Code of Ukraine from 2012, after which they found application in the judicial practice, which, at the same time, consistently takes into account the experience regarding their content, given in the judgments of the European Court of Human Rights.

Keywords: Proof; standards of proof; inner conviction; assessment of the evidences; criminal proceeding.

кримінальному процесі США та України: у кримінальному процесі США вони були сформовані в судовій практиці і згодом відображені в Модельному кримінально-процесуальному кодексі; в кримінальному процесі України вони вперше набули нормативно-правового закріплення в Кримінально-процесуальному кодексі України з 2012 року та застосування в судовій практиці, яка, водночас, поступово враховує й досвід щодо їх змісту, відображений у рішеннях Європейського суду з прав людини.

Ключові слова: доказ; стандарти доказування; внутрішнє переконання; оцінка доказів; кримінальне провадження.

Resumen

El propósito del documento es la divulgación del concepto, las características de la formación del sistema y el mecanismo de aplicación de las normas de prueba en el procedimiento penal del derecho consuetudinario y los sistemas jurídicos continentales (en el ejemplo de los Estados Unidos y Ucrania). Como resultado de la investigación, se compararon el concepto, las características del sistema y el mecanismo de aplicación de las normas de prueba en el procedimiento penal de los Estados Unidos y Ucrania, lo que reveló las similitudes y diferencias entre ellos. De acuerdo con los resultados de la investigación del concepto de las normas de prueba en el procedimiento penal de los Estados Unidos y Ucrania, se distinguieron sus signos, lo que permitió concluir que su concepto se aproxima en la doctrina del procedimiento penal de los países mencionados. En el proceso penal, tanto en los EE. UU. Como en Ucrania, las normas de prueba reflejan el nivel requerido de conocimiento sobre los hechos y circunstancias de los procedimientos penales que debe alcanzar un decisor para tomar una decisión. Se establecieron las diferencias en la formación del sistema de estándares de prueba en el proceso penal de los Estados Unidos y Ucrania. En el procedimiento penal de los Estados Unidos, se formaron en la práctica judicial y posteriormente se reflejaron en el Código Modelo de Procedimiento Penal. En el procedimiento penal de Ucrania, obtuvieron apoyo regulatorio en el Código de Procedimiento Penal de Ucrania a partir de 2012, después de lo cual encontraron aplicación en la práctica judicial, que, al mismo tiempo, tiene en cuenta constantemente la experiencia con respecto a su contenido, dado en las sentencias del Tribunal Europeo de Derechos Humanos.

Palabras Clave: Prueba; estándares de prueba; convicción interna; evaluación de las evidencias; procedimiento penal

Introduction

The standards of proof are a legal category that is widely used in criminal procedure of the countries of the common law and continental legal systems. In the doctrine of criminal procedure of the common law and continental legal systems problems of the standards of proof have been the subject of research in scientific works of a number of scientists, developments of which is fundamental to the formation of understanding about them concept, features of the formation of the system and mechanism of application. In the criminal process of the USA theoretical and practical questions regarding the

standards of proof were researched by B. Bennett, K. Clermont, J. Cooper, C. Engel, R. Friedman, E. Sherwin and other scientists. In the criminal process of Ukraine V. Hloviuk, H. Kret, O. Mitskan, M. Pohoretskyi, Kh. Sliusarchuk, A. Stepanenko, O. Tolochko, V. Vapniarchuk and other scientists turned to the research of problems of the standards of proof. Despite the significant contribution of scientists to the development of these issues, a comparative legal research of the standards of proof in the criminal procedure of the common law and continental legal systems on

the example of the USA and Ukraine was not conducted.

Initially, the standards of proof were formed in the common law legal system, in which they were used as appropriate indicators of the required level of judge's (jury's) conviction that the particular circumstances of a criminal case were sufficient to make a relevant judicial decision. In the continental legal system, the concept of the inner conviction of a judge (jury) has historically emerged as a state of his confidence in establishing of the circumstances of a criminal case necessary to reach a relevant judicial decision. At the same time, at the present stage of the development of criminal procedural law of the countries of the continental legal system, certain standards of proof, known to the common law legal system, are being introduced to it. Their consistent implementation raises a number of problematic issues, which primarily concern the definition of the standards of proof, the circumscription of their system and the correlation with the inner conviction of the court (judge), which necessitates the need in a comparative research of the standards of proof in the criminal procedure of the common law and continental legal systems, which will be done on the example of the USA and Ukraine.

The purpose of this paper is disclosure of the concept, features of the formation of the system and mechanism of application of the standards of proof in the criminal procedure of the common law and continental legal systems (on the example of the USA and Ukraine).

The **methodological** ground of the paper is a system of philosophic, scientific general and specific methods of the scientific research. The comparative legal method was used to compare the concept, system and mechanism of application of the standards of proof in the criminal procedure of the USA and Ukraine and to identify similarities and differences between them. The systematic method allowed us to research the system of the standards of proof in the criminal procedure of the USA and Ukraine. With the help of the functional method the mechanism of application of the standards of proof in the criminal procedure of the USA and Ukraine was researched. The formal legal method was applied in research of the precepts of the Model Code of Criminal Procedure of USA and the Criminal Procedure Code of Ukraine.

Results and Discussions

The Concept of the Standards of Proof in the Doctrine of Criminal Procedure of the USA and Ukraine

In the doctrine of criminal procedure of USA, the standards of proof are regarded as the degree or level of proof needed in a specific case (O'Connor, Vivienne & Rausch, Colette, Albrecht, Hans-Joerg & Klemencic, Goran, 2008). Namely, the concept of standards of proof is determined by summarizing of the two signs inherent to them: 1) they are the degree or level of proof. Based on this feature, the concept of the standards of proof is revealed by taking into account the concept of proof, which has several meanings and is characterized by American scientists as the logically sufficient reason for convincing the mind of the truth or falsehood of a fact or proposition; the result or effect of evidence; the conclusion drawn from the evidence (Campbell, 1968). Accordingly, the standards of proof reflect the degree or level of proof of the facts and circumstances of the criminal case required for a judge (jury and, in some cases, also police officer) to make a decision, in that regard they are sufficient reason to justify it. In this aspect, the concept of the standards of proof reflects the necessary level of probability of the knowledge about the facts and circumstances of a criminal case received by a judge (jury). Ukrainian scientists have pointed out this aspect and indicated that the standards of proof in the common law legal system is defined as the level of probability at which the facts are proved (Pohoretskyi, 2019); 2) this degree or level of proof is needed in a specific case. This feature implies that the degree or level of proof of the facts is determined considering the specifics of the criminal case and allows to take into account a number of factors: the totality of evidences provided by the parties; the range of facts and circumstances which subject to proof; the type of decision to be made based on a relevant standard of proof. The establishment by a judge (jury) on the basis of available evidences of the degree or level of proof of the facts and circumstances of the criminal case necessary to reach a relevant decision, testifies to achievement of the standard of proof. In this aspect, the standards of proof are closely linked to the sufficiency of the evidences that provides the necessary degree or level of proof in a particular criminal case.

In the doctrine of the criminal procedure of Ukraine three approaches to define of the concept of the standards of proof are formed. According

to the first approach, which is based on an objective criterion, the standards of proof are considered as a set of regulatory fixed requirements for the results of the evidential activity of the prosecution party, the fulfillment of which is a condition for the court to make a legal procedural decision (Hmyrko, 2010). From the point of view of the second approach, which is based on the subjective criterion, the standards of proof are characterized as a certain criterion (threshold) of decision making for the subject of their adoption (Hloviuk and Stepanenko, 2018), a certain conditional nonesuch, a benchmark, an optimal level of requirements, indicating the sufficiency of knowledge to make a relevant procedural decision (Vapniarchuk, 2017). In the third approach, which combines the above criteria, the standards of proof are defined as a system enshrined in the rules of criminal procedural law and formed in the judicial practice of the Supreme Court, rules that ensure the formation by a subject of proof of a sufficient set of appropriate, admissible and credible evidences and the achievement on the results of their assessment of the level of conviction required to make a relevant procedural decision (Kret, 2018). Regardless to the differences in the disclosure of the concept of the standards of proof for each of these approaches, their analysis shows that in the general concept of standards of proof in the doctrine of the criminal procedure of Ukraine is approximate to its understanding in the doctrine of the criminal procedure of the USA. This approximation is achieved by pointing in the given definitions to such a feature of the standards of proof as a reflection, by means of them, of the necessary level of knowledge about the facts and circumstances of the criminal proceedings which the decision-maker must reach to make it. At the same time, based on the above approaches, the standards of proof in the doctrine of the criminal procedure of Ukraine are characterized by a wider range of signs that conceptually influence the definition of their concept and allow to fully disclose it in view of the normative regulation of criminal procedural proof.

In connection with this, it is justified to distinguish by Ukrainian scientists, along with the specified feature of standards of proof, also of such signs:

- 1) They have an objective character – consolidation as a system of relevant rules in the rules of the Criminal Procedure Code of Ukraine and formation in the judicial practice of the Supreme Court;

- 2) The standards of proof are achieved on the basis of an assessment of a sufficient set of appropriate, admissible and credible evidences;
- 3) Their achievement presupposes the formation of a relevant inner conviction by the subjects of making procedural decisions (investigator, prosecutor, investigating judge, court);
- 4) The standards of proof are a necessary condition for the adoption of a relevant procedural decisions.

The Formation of a System of Standards of Proof in the Criminal Procedure of the USA and Ukraine

In the USA, standards of proof have been formed in the judicial practice for more than two centuries, during which the following have been consistently produced and widely used: “beyond reasonable doubt”, “clear and convincing evidence”, “preponderance of the evidence”, “reasonable suspicion”, “probable cause”, “reasonable to believe” or “reasonable grounds to believe”, “some credible evidence”, “sufficiency of the evidence”. Today some of them (“probable cause”, “reasonable suspicion” and “beyond reasonable doubt”) has been reflected in the Model Code of Criminal Procedure of USA, which defines the concept of each of them. The concept of the standard of proof “probable cause” is contained in article 1(36) of them, according to which probable cause means an objectively justifiable and articulable suspicion that is based on specific facts and circumstances that is tends to show that a specific person may have committed a criminal offence (O’Connor et ed., 2008). The concept of the standard of proof “reasonable suspicion” revealed in article 1(40) of them, according to which reasonable suspicion means evidence and information of such quality and reliability that they tend to show that a person may have committed a criminal offence (O’Connor et ed., 2008). The concept of the standard of proof “beyond reasonable doubt” cited in article 216(3) of them, which provides that the accused must not be convicted of a criminal offense unless the prosecutor proves beyond reasonable doubt that the accused committed the criminal offence (O’Connor et ed., 2008). The contents of other standards of proof (“clear and convincing evidence”, “preponderance of the evidence”, “reasonable to believe” or “reasonable grounds to believe”, “some credible evidence”,

“sufficiency of the evidence”) is disclosed in the judicial practice.

In the criminal procedure of Ukraine, standards of proof were introduced by the Criminal Procedure Code of Ukraine from 2012, the analysis of the norms of which can be attributed to them: “reasonable suspicion”, “probable cause” and “beyond reasonable doubt”. The concept of the above standards of proof is not disclosed by the Ukrainian legislator, although part 2 of article 17 of the Criminal Procedure Code of Ukraine defines the content of the standard of proof “beyond reasonable doubt” approximately to article 216(3) of the Model Code of Criminal Procedure of USA. According to this rule of the Criminal Procedure Code of Ukraine, no one is not required to prove his innocence in the commission of a criminal offense and must be justified if the prosecution party does not prove the person’s guilt beyond a reasonable doubt (VRU, 2012).

In the judicial practice of Ukraine received the interpretation of the concept and content of only one standard of proof – “beyond reasonable doubt”. In particular, the Supreme Court has stated in a number of judgments that the standard of proof “beyond reasonable doubt” means that the totality of the circumstances of a case established during the trial excludes any other understanding of the explanation of the event which is the subject of the trial, except that the criminal offense was committed and the accused is guilty in the commission of this crime (in particular, the resolutions from 21.02.2018 in the case No 701/613/16-k, from 18.04.2019 in the case No 493/1616/16-k and others) (SC, 2018; 2019).

The significant influence on the formation of the system of standards of proof in the criminal procedure of Ukraine is exercised by the practice of the European Court of Human Rights, which is determined by the rules of both international treaties and national legislation. Thus, according to part 1 of article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties (UN, 2013). According to part 1 of article 2 of the Law of Ukraine “About the enforcement of judgments and the application of practice of the European Court of Human Rights” from 23.02.2006 No 3477-IV, the judgments of the European Court of Human Rights is compulsory for implementation by Ukraine in accordance with article 46 of the Convention (VRU, 2006). In the practice of the

European Court of Human Rights, including the cases in which Ukraine has been the defendant, three standards of proof set out in Ukrainian criminal procedural law are widely used: “reasonable suspicion” (in particular, the judgment from 10.02.2011 in the case of Kharchenko v. Ukraine, the judgment from 21.04.2011 in the case of Nechiporuk and Yonkalo v. Ukraine, the judgment from 02.04.2015 in the case of Orlovskiy v. Ukraine, the judgment from 30.01.2018 in the case of Makarenko v. Ukraine and others) (ECHR, 2011a; 2011c; 2015; 2018), “probable cause” (in particular, the judgment from 14.10.2010 in the case of Khayredinov v. Ukraine, the judgment from 03.07.2012 in the case of Lutsenko v. Ukraine, the judgment from 30.01.2018 in the case of Makarenko v. Ukraine and others) (ECHR, 2010; 2012; 2018) and “probable cause” (in particular, the judgment from 21.04.2011 in the case of Nechiporuk and Yonkalo v. Ukraine, the judgment from 21.07.2011 in the case of Korobov v. Ukraine, the judgment from 04.09.2014 in the case of Rudyak v. Ukraine, the judgment from 11.02.2016 in the case of Pomilyayko v. Ukraine and others) (ECHR, 2011b; 2011c; 2014; 2016).

In the doctrine of the criminal procedure of Ukraine outlines several approaches to defining of the system of standards of proof.

In the first approach, scientists define a system of the standards of proof based on the traditional understanding of their concept, which boils down to the formation of the level of conviction needed to adoption of a relevant procedural decision. Within this approach, one group of scholars share the position of the legislator regarding to distinguish of three standards of proof: “reasonable suspicion”, “probable cause” and “beyond reasonable doubt” (Marchuk, 2015), second group of scholars in addition to the above distinguish the standards of proof “reasonable to believe” or “reasonable/justified grounds to believe” (Hloviuk and Stepanenko, 2018), “conviction for the greater probability” and “weighty conviction” (Sliusarchuk, 2017), third group of scholars substantially deviate from the legislative approach and distinguish between standards of proof “at first view” (“by external signs of phenomena” or “probable assumption”), “weighty conviction” (“reasonable assumption”) and “beyond reasonable doubt” (Vapniarchuk, 2017).

In the second approach, scientists substantiate the feasibility of extending of the traditionally formed system of the standards of proof. Thus,

based on the summarizing of a number of approaches of Ukrainian and foreign scientists, they indicate that the system of the standards of proof in the criminal procedure of Ukraine includes two of their groups: 1) standards of the formation of the level of conviction necessary for adoption of a relevant procedural decision, among which are the standards of the proof “reasonable suspicion”, “probable cause” and “beyond reasonable doubt”; 2) standards of the formation of a sufficient set of appropriate, admissible and credible evidences (as a separate group of standards of the proof, they should reflect the features of collection, verification and assessment in terms of procedural properties of each of the types of procedural sources of evidences, identified by the criminal procedural law), which include standards for the formation of testimony, standards for the formation of material evidences, standards for the formation of documents, standards for the formation of expert opinions (Kret, 2019). The analysis of the above approaches in the context of the Criminal Procedural Code of Ukraine, dedicated to the criminal procedural proof, allows to state that the second one more fully reflects the Ukrainian legislature’s approach to defining of the concept and structure of the proof. Thus, according to part 2 of article 91 of the Criminal Procedural Code of Ukraine, the proof consists in the collection, verification and assessment of evidences on the purpose to establish of the circumstances relevant to criminal proceedings (VRU, 2012). The content of criminal procedural proof laid down by the legislator indicates the need to distinguish of the standards of proof which relate not only to the sufficiency of evidences (as one of their procedural properties to be established in the course of the assessment of evidences), but also to their collection, verification and assessment in terms of other procedural properties – the appropriate, admissibility and credibility.

The Application of the Standards of Proof in the Judicial Practice of the USA and Ukraine

In the judicial practice of the USA, the standards of proof are applied by conducting by a judge (jury and, in some cases, also police officer) a legal test to assessment of the evidences at the time of the adoption of decision. This test is applicable to the facts and circumstances of a particular criminal case and involves the formation in the mind of a judge (jury, police officer) a conclusion about achievement on the basis of available evidences, the degree or level of proof of the facts and circumstances of the criminal case required for adoption of a relevant

decision. The threshold value of such conclusion depends on the type of used standard of proof and is set by a judge (jury, police officer) in each specific case.

In the doctrine of criminal procedure repeatedly paid attention to the objective nature of the standards of proof. Thus, scholars indicate that the significant jurisdictional role of juries (both in criminal and civil proceedings) has led to the need to develop and use in the proof the concept of the “standard of proof” as a certain objective criterion for its assessment (Vapniarchuk, 2017). At the same time, the standards of proof cannot be characterized as an objective model of the sufficiency of evidences for several reasons. Firstly, the standards of proof are perceived in the doctrine and practice of common law countries as a sufficiently flexible and subjective procedural tool (Smolnykov, 2015). Describing specific standards of proof, scientists note that the standard “beyond reasonable doubts” is also very subjective, because certainty (as conviction) – is internal state that is difficult to manage. The standard of proof “clear and convincing evidences” is no less subjective. It seems that the balance of probabilities is intuitively simpler and more understandable, because implies a simple advantage in favour of one of the parties. In addition, such standard is perceived as subjective: it is about a probability, which is measurable (Tolochko, 2019). The standard of proof “reasonable suspicion” is part objective and part subjective and is a lesser burden than of probable cause, the balance of probabilities and beyond reasonable doubt (O’Connor et al., 2008). Secondly, the application of the standards of proof presupposes that there is a degree of probability in establishing of the facts and circumstances of a criminal case, depending on the type of standard of proof. Thirdly, the application of the standards of proof is carried out on the basis of the knowledge of a judge (jury, police officer) of the facts and circumstances of the criminal case, the results of which are the consequence of a legal test for the assessment of evidences at the time of the adoption of decision. The assessment of evidences is a mental activity that is largely subjective, which in turn determines the subjective element’s attribution of the results of knowledge of facts and circumstances of criminal proceedings.

In the judicial practice of Ukraine, the standards of proof are applied taking into account the inner conviction of the investigator, prosecutor, investigating judge, court. Inner conviction in the doctrine of the criminal procedure of Ukraine is

considered in two aspects: 1) psychological: in the dynamics – as a process of its formation, which involves the creation of their own thought, overcoming and eliminating doubts and uncertainty, and in statics – as a result, which reflects the state of firm confidence in correctness of their confidence, the determination to record them in the procedural documents and to express them as necessary in public, the willingness to defend them and to bear responsibility for them; 2) epistemological – as knowledge about both the individual factual circumstances of the case and their totality, which is the subject of proof in the case, the conclusions in the latter, including those concerning the legal assessment, qualification of established facts, circumstances, events (Mykheienko, 1999). Inner conviction provides the process of adoption of every procedural decision which is subject to resolution based on an assessment of the available evidences. In this case, taking into account the norm of part 1 of article 94 of the Criminal Procedural Code of Ukraine, it is an indispensable condition for the assessment of the evidences itself as a process of establishing of their appropriative, admissibility, credibility and sufficiency, aimed at ascertainment of the possibility of adoption of a relevant procedural decision.

The existence of the concept of inner conviction is explained by the fact that for a long time the purpose of criminal procedural proof in the doctrine of the criminal procedure in Ukraine was recognized as establish the truth (Nor, 2010; Kozlenko, 2014). Truth was defined as constituted (constructed) during criminal proceedings in the manner prescribed by law a credible, consistent knowledge about the circumstances which are subject to proof, reflecting these circumstances in the minds of the people in exact accordance with the reality and/or knowledge recognized as such by the agreement (convention) of the parties (Vapniarchuk, 2017). At the same time, the indication of the duty to ascertain objective truth was contained in a number of provisions of the Criminal Procedural Code of Ukraine from 1960, which became invalid due to the entry into force of the Criminal Procedural Code of Ukraine from 2012.

At the present stage of the development of criminal procedural proof, there was a revision of its purpose by departing from the concept of truth and recognizing as his purpose the establishment of the circumstances of the criminal proceedings in such form in which it maximum possibly, taking into account the available evidences obtained through application of the exhaustive

effort made before this, and the positions of the parties of the criminal proceedings. Thus, scientists indicate that the purpose of criminal procedural proof should be determined on the basis of the functional structure of the competitive criminal proceedings and its purpose. It is quite obvious that the purpose of proof for each of the parties of the criminal proceedings in a competitive (including mixed) criminal procedure, based on its functional structure, as a rule, does not coincides. Each of the parties of the criminal proceedings has its own purpose, which is determined by their procedural functions (Pohoretskyi, 2015). This revision of the purpose of criminal procedural proof was conditioned by the fact that a crime event took place in the past, and therefore it is not always possible to establish information about it at the level of objectively true knowledge.

At the expense of the purpose of criminal procedural proof and exclusion from it of an indication of the truth, the introduction of the standards of proof in the criminal procedure of Ukraine does not contradict to the concept of inner conviction and allows to clarify it something. This is due to the fact that the standards of proof contain an indication to the level of conviction of the judge necessary to adoption of a relevant procedural decision. As Ukrainian scientists point out, the combination of formalized standards of proof with the principle of free assessment of evidences by law enforcement subjects is not eclectic: the standards of proof form a certain somatic marker that indicates the degree of inner conviction that law enforcement subjects must reach for adoption of a relevant procedural decision (Pohoretskyi, 2015). Thus, the standards of proof make it possible to clarify the inner conviction of the judge and its content at the time of adoption of a relevant procedural decision, and therefore do not enter into contradiction among ourselves and applied simultaneously: the standards of proof provide for the formation of an inner conviction.

In the doctrine of the criminal procedure of the USA inner conviction which is also referred to as deep-seated, personal conviction is characterized as established by continental law a high criminal standard (Clermont and Sherwin, 2002). Foreign scientists admit that this subjectivist standard of proof in Continental legal orders therefore mirrors the mental activity of real judges and jurors. It is descriptively correct, and it in principle is able to reach the stated normative goal (Engel, 2009). At the same time, in their opinion, judicial intuition is indeed not foolproof.

Since it partly relies on idiosyncratic memory, the outcome is not fully predictable. The subjectivist standard of proof therefore is far from perfect (Engel, 2009). The above concept of inner conviction and the proposed combination of the standards of proof with it allow us to disagree with this approaches. Firstly, inner conviction cannot be regarded as a standard of proof because it is a multifaceted concept: the inner conviction is an element of the assessment of evidences, and the standard of proof is the result of its implementation. Secondly, the inner conviction is based not only on the intuition of subject of adoption of a relevant procedural decision, but also, as provided in part 1 of article 94 of the Criminal Procedural Code of Ukraine, on a comprehensive, full and impartial research of all circumstances of criminal proceedings (VRU, 2012). Thirdly, during the assessment of the evidences, the investigator, prosecutor, investigating judge, court are obliged to follow the law, and this prevents to the unpredictability and arbitrariness of adoption of procedural decisions.

Conclusions

The conducted research of the concept, features of formation of the system and mechanism of application of the standards of proof in the criminal procedure of the USA and Ukraine allows to confirm that:

1. The concept of the standards of proof in the doctrine of criminal procedure in these countries is somewhat approximate: they reflect the necessary level of knowledge about the facts and circumstances of criminal proceedings that a decision-maker must reach to make it. Regardless of the type of criminal proceeding (competitive in the USA and mixed in Ukraine), the understanding of the standards of proof is closely linked to the sufficiency of the evidences at the time of the adoption of relevant procedural decision, which is established by the results of their assessment.
2. The standards of proof in the criminal procedure of the USA were formed in the judicial practice and subsequently reflected in the Model Code of Criminal Procedure, and in the criminal procedure of Ukraine, they first gained regulatory support in the Criminal Procedure Code of Ukraine from 2012, and then found application in the judicial practice, which, at the same time, consistently takes into account the experience regarding their content in the judgments of the European Court of Human Rights. Due to the precedent nature of the judicial practice of the USA, the system of the standards of proof formed in it is more broad than in the criminal procedural law and judicial practice of Ukraine. Taking into account the concept and content of criminal procedural proof, defined by the Criminal Procedure Code of Ukraine, the theoretical approach to distinguish the standards of the formation of a sufficient set of appropriate, admissible and credible evidences as an independent group of the standards of proof is justified.
3. The mechanism of application of the standards of proof in the criminal procedure of the USA and Ukraine is differ significantly. In the criminal procedure of the USA, they are applied by conducting of a legal test to assessment of the evidences aimed at forming in the mind of a judge (jury, police officer) a conclusion about achievement on the basis of available evidences, the degree or level of proof of the facts and circumstances of the criminal case required for adoption of a relevant decision on the basis of them the degree or level of proof of the facts and circumstances of the criminal case necessary to adoption of a relevant decision. In the criminal procedure of Ukraine, the standards of proof are applied taking into account the inner conviction of the investigator, prosecutor, investigating judge, court during the assessment of evidences: the standards of proof supplement the inner conviction of them, while acting as a factor that indicates its boundaries during the adoption of a relevant procedural decision.

Reference

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