УДК 343
DOI: 10.31359/1993-0909-2019-26-3-246

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ДОКАЗИ В КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ: ПРОБЛЕМИ ДОПУСТИМОСТІ У СУЧАСНИХ РЕЛІЯХ

Анотація. *У сучасних умовах докази в інформаційно-пізнавальному контексті можна розглядати як своєрідний місток між юристами-дослідниками (слідчий, прокурор) і досліджуваною в контексті вимог статті 91 Кримінального процесуального кодексу України подією минулого. Це пов'язано з тим, що за допомогою доказів сторони зі змісту ідеальних і матеріальних слідів події минулого видобувають потрібну їм інформацію, з якої формують під позиційний інтерес процесуальне знання. Тому основна мета роботи полягає у проведенні комплексного аналізу інституту допустимості доказів у кримінальному провадженні на території України з урахуванням реформування вітчизняного законодавства та правозастосовчої практики. Для досягнення поставленої мети використані загальнонаукові методи та прийоми зокрема такі як: метод діалектичного пізнання; метод моделювання; порівняльно-правовий метод; формально-логічний метод; статистичний метод; метод юридико-технічного аналізу. Автором констатовано, що норми чинного законодавства, якими врегульовано допустимість доказів, об'єктивно детермінують інші процесуальні інститути досудового провадження. У зв'язку з цим, оцінюючи інтегративний вплив інституту допустимості на процес доказування, слід констатувати його невідповідність сучасному рівню загроз економічній, національній безпеці у вигляді кіберзлочинності, організованих форм економічної злочинності та елітарної корупції. У статті аргументовано, що сучасний кримінальний процес з властивим йому інститутом допустимості не дозволяє ефективно захищати національні інтереси України та права людини, закріплені у міжнародно-правових зобов'язаннях, взятих на себе нашою державою. Відтак, сучасна геополітична обстановка та євроінтеграційні прагнення нашої держави вимагають зміни кримінальної, кримінально-процесуальної політики та відповідного правового регулювання, які повинні стати правовим інструментарієм на шляху до подолання проблем у сфері допустимості доказів та забезпеченні ефективного захисту прав людини та громадянина.*

Ключові слова: захист прав людини, євроінтеграція, реформування законодавства, досудове розслідування, судочинство.

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EVIDENCE IN CRIMINAL PROCEEDINGS: ADMISSIBILITY ISSUES IN MODERN REALITIES

Abstract. *In modern realities, evidence in an information and cognitive context can be regarded as a kind of bridge between investigating lawyers (investigator, prosecutor) and the event of the past, investigated in the context of the requirements of Article 91 of the Criminal Procedure Code of Ukraine. This is connected with the fact that, with help of the evidence, the parties, judging from the content of the ideal and material traces of the event of the past, can obtain the information they need, from which they form the procedural knowledge according to their positional interest. Therefore, the main purpose of the paper is to conduct a comprehensive analysis of the institution of admissibility of evidence in criminal proceedings in the territory of Ukraine, with consideration of the reform of national legislation and law enforcement practice. To achieve this purpose, common scientific methods and techniques are applied, namely: the method of dialectical cognition; modelling method; comparative law method; Aristotelian method; statistical method; method of legal and technical analysis. The author states that provisions of the current legislation, which regulate the admissibility of evidence, objectively determine other procedural institutes of pre-trial proceedings. In this regard, while assessing the integrative impact of the institution of admissibility on the process of proof, it should be noted that it does not correspond to the current level of threats to economic, national security in the form of cybercrime, organized forms of economic crime and elitist corruption. The article argues that the modern criminal process with its inherent institution of admissibility does not effectively protect the national interests of Ukraine and human rights enshrined in the international legal obligations undertaken by our state. Therefore, the current geopolitical situation and European integration aspirations of our country demand changes in criminal offense, criminal procedure policy and appropriate legal regulation, which should become a legal toolkit on the way to overcoming the issues of the admissibility of evidence and ensuring the effective protection of human and citizen rights.*

Keywords: protection of human rights, European integration, reform of legislation, pre-trial investigation, proceedings.

INTRODUCTION

In conditions of the development of legal democratic state institutions in Ukraine, the basic rules governing the inadmissibility of the use of evidence in criminal proceedings, which was obtained in violation of the law, are the rules enshrined in the provisions of the Criminal Procedure Code of Ukraine. It should be emphasized that such evidence refers to materials – verbal and written messages from persons, as well as things (objects and documents) obtained by the court and parties with

application of the proper legal procedure, the use of which is necessary to establish the facts and substantiate procedural decisions in criminal proceedings[1].

In the territory of our country, the current criminal procedure law, despite the establishment of specific grounds for rendering the evidence as inadmissible, provides rather vague guiding criteria for decisions regarding the exclusion of inadmissible evidence [1]. Such an approach, by its essential content, does not provide for an appropriate assessment of the violations of criminal procedure law upon collecting evidence in terms of its materiality (fundamentality), thereby allowing the exclusion of the evidence obtained on formal grounds of inadmissibility, thereby minimizing the possibility of protection of the rights and legitimate interests of the victims of crime [2]. In addition, the current legislation contains no rules that would establish the forms of reaction to a decision on rendering the evidence as inadmissible, which gives rise to a rather contradictory investigative and judicial practice.

With regard to the theory of criminal proceedings, the subject matter selected for the article is considered to be one of the most relevant, proceeding from the fact that the evidence is directly related to the exercise of the rights and freedoms of the individual. It should be highlighted that the institution of admissibility of evidence is not its formal regulation, the features of consolidation in the legislation produce a significant impact on justice in general, and the admissibility provisions are an indicator of the democratization of the judicial procedure and society, the attitude of the state towards the rights and freedoms of the individual.

In the context of intensification of the processes of scientific and technological progress and evolution of crime, the notion of admissibility of evidence is of particular theoretical and practical importance. To solve a crime, to justly punish a guilty person in the course of the investigation of each criminal case, it is crucial to correctly establish all the circumstances required to solve the case [3]. Furthermore, the legally established objectives of a criminal trial can only be ensured when law enforcement agencies establish the truth in a criminal case [4]. In turn, the property of admissibility of evidence is crucial, provided that the immediate task of the said attribute is to protect the rights and legitimate interests of citizens. Admissibility is the most important guarantee against the unjustified criminal prosecution of citizens.

The theoretical issues relating to the subject matter of the research are considerably addressed in the criminal process, but at the same time many variations in doctrinal approaches to the same issues arise, demanding their mutual agreement. A specific stance on the research of issues of the theory of evidence in the science of criminal process is explained by the fact that among scientists there is a universally accepted postulate – knowledge of issues of evidence and proof in the criminal process provides knowledge of the criminal process itself [5]. This fact gives rise to a constant increased

[1] Criminal Procedure Code of Ukraine: Law of Ukraine (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

interest in this issue among many authors who consider various aspects of the theory of evidence in their work. At the same time, scientific developments connected with the admissibility of evidence in criminal proceedings appear to be some of the most relevant [6–8]. The main problematics of the doctrine of evidence at the modern stage of qualitative reform of national legislation and European integration are issues of admissibility of evidence, criteria for the use of evidence, in the presence of which violations of the law of evidence can be applied, and which violations require its obligatory exclusion from the collected material base [9].

In consideration of the foregoing, the purpose of the paper is to conduct a comprehensive analysis of the institution of admissibility of evidence in criminal proceedings in the territory of Ukraine, factoring in the reform of national legislation and law enforcement practice. In accordance with the stated purpose, the following research objectives were outlined: 1) to disclose the concept of procedural evidence and their meaning; 2) to analyse the admissibility of evidence in criminal proceedings; 3) to identify the main issues connected with the admissibility of evidence in criminal procedural law and develop proposals for its improvement.

1. MATERIALS AND METHODS

The methodology of the research is based on a set of general scientific methods and techniques applied in legal science. Upon the research, the method of dialectical cognition facilitated the proper analysis of the nature, concept and significance of the admissibility of evidence in criminal proceedings. With help of the simulation method, the rules of admissibility of evidence in criminal proceedings were examined, their issues were identified. Substantial features of admissible evidence that distinguish them from other admissible evidence were identified with help of the comparative law method. The Aristotelian method ensured the analysis of the legislation, which defines the theoretical and legal grounds of admissible evidence procurement in criminal cases. The statistical method and the method of legal and technical analysis enabled the formulation and submission of proposals for improving the provisions of criminal procedure legislation governing the legal relations in the field of evidence and proof.

The theoretical basis of the research consists of scientific works in the field of national science of criminal process, criminal law, other branches of law, criminalistics, philosophy, logic, other sciences, as well as monographs, abstracts and thesis, scientific articles and other theoretical materials covering certain aspects of the object and subject of research.

The method of analysis allowed to determine that the institution of admissibility of evidence takes a special place in the structure of criminal procedure law and theory of evidence. In fact, it acts as the quintessential form of criminal justice, moreover, the admissibility of evidence in the domestic scientific paradigm is reasonably identified with the legitimacy of the entire procedure of proof. Admissibility determines the ef-

fectiveness of the prosecution and the level of protection of the rights and freedoms of participants in the trial, delineates the legitimate and illegal actions of the participants in the proof, establishes a balance of public and private interests during the pre-trial and judicial proceedings.

Despite the considerable number of scientific works and the increased interest in the problematics of the law of evidence in criminal proceedings, many matters concerning the admissible evidence in criminal proceedings, both doctrinal and purely applied, remain debatable or completely unsettled. In addition, the vast majority of scientific research is based on pre-existing legislation, and consequently, they have not and could not have taken into account the changes related to the new paradigm of criminal proceedings.

2. RESULTS AND DISCUSSION

In modern realities, evidence, in an information and cognitive context, can be regarded as a kind of bridge between investigating lawyers (investigator, prosecutor) and the investigated event of the past in the context of the requirements of Article 91 of the Criminal Procedure Code[1]. This is connected with the fact that through evidence, the parties, from the content of the ideal and material traces of the events of the past, procure the necessary information, which is further formed into procedural knowledge according to positional interests – *factum probans* and *factum probandum*.

Contextually, the legal concept of "procedural proof", if it is to be considered as a single whole, is justifiably correlated, both in everyday life and in doctrine, first of all, with such concepts as: “argumentation”, “information”, “data” (factual data), “procedural steps of evidence procurement”, “proof”, “argument”, “document”, “means of persuasion”, “knowledge”, “interpretation”, “information”, “objects”, “things”, “investigative actions”, “facts” and more. All of them are quite prudently and justifiably applied by the interested disputants in various practical situations of human activity as a means of justifying (proving) a certain statement. Therefore, it is also prudent to assume that the meaning of the term “procedural (legal) evidence” cannot be reduced to any of the above, as, for example, this was done by the legislator in paragraph 1 of Article 84 of the Criminal Procedure Code of Ukraine[2], where its definition is built on the use of a single concept of "actual data".

To clarify the content of doctrinal approaches to the interpretation of the concept of “procedural proof”, it would be appropriate to refer to the most generalized, proposed by V.P. Hmyrko, procedural wording – “the composition of criminal and judicial proof”, within which, according to the methodological scheme of “many knowledge”, the knowledge on the “proof”, accumulated in modern procedural science and practice, is

[1] Criminal Procedure Code of Ukraine: Law of Ukraine (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

[2] *Ibidem*

configured. The above wording, as a purely practical and methodical means of proof, may consist of the following four interconnected segments (blocks), each of which having its own inherent functionality in its composition.

The regulatory and procedural block covers the function of a regulatory filter designed to ensure that materials meet the requirements of legislative standards relating to the conditions, means and procedures of forming materials and putting them into circulation of evidence.

The information block covers the implementation of its function of providing the court and the parties with information as the starting material for the formation of procedural knowledge – facts of evidence. The information block consists of two elements: 1) information, as the composition of records, actual data obtained as a result of investigative (search) actions; 2) sources of information – persons, as well as various things, as the results of their activity, which become necessary for the court and parties due to their properties, condition, characteristics, time and place of their production (occurrence).

The judicial interpretation block deals with the possibility of using material produced in court as criminal judicial evidence for the purpose of proof. In particular, materials collected (generated) by the parties in the context of a pre-trial investigation as an independent legal activity should only be transformed into judicial materials following the results of their critical examination. As the court determines the admissibility of materials as their sole legal characteristic, it must proceed to the interpretative part of handling them, addressing the issues of pragmatic nature – their belonging, reliability, weight, persuasiveness and importance of materials for the parties, as a result of which is the information transforms into knowledge and the materials – into court evidence. It is worth agreeing that all evidence constitutes proceedings materials, but not all materials can be accepted as evidence.

The fact-finding block establishes the sought subject matter facts of proving a particular procedural decision, such as a sentence, through criminal judicial evidence by applying the logical proof procedure, and its components are: 1) *factum probandum as a logical thesis; 2) factum probans* as a logical argument; 3) a legal conclusion on the nature of the relationship between them (the basis for the legal question of the adherence of evidence); 4) demonstration as confirmation by the parties of the logical sequence of the transition from the arguments to the thesis being proved in the context of this connection [10].

Thus, the wording "composition of evidence" enables lawyers to view the evidence as a coherent structure, while avoiding the "*pars pro toto*" logical error committed by the legislator in paragraph 1 of Article 84 of the Criminal Procedure Code[1] by declaring

[1] Criminal Procedure Code of Ukraine: Law of Ukraine (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

the evidence to be "factual data" – only one of the many possible interpretations of this inexhaustible procedural phenomenon.

It can be concluded that, firstly, the theoretical concept of "procedural proof", constructed by the doctrine, should cover with its content legal, linguistic, cognitive, psychological, logical, informational and other possible aspects (parties), and, secondly, in the purely practical plan, evidence must be considered as activity-related, that is, as the fruits of the efforts of the parties and the court in its production (formation), rather than naturalistic, that is, as ready factual data that need timely collection, verification and evaluation for further use in proof.

The specified naturalistic approach to understanding procedural evidence, being dominant in the Soviet doctrine of law of evidence, still retains a great ideological influence on the doctrines of post-Soviet countries. As S.A. Pashyn rightly points out in this context, "... evidence cannot be considered in a naturalistic way: as a natural object, as a thing in itself that has "properties" to be revealed only by the subject. Appropriateness, admissibility, reliability, and sufficiency of evidence do not reflect the properties inherent in the materials, but serve as the characteristics of the operations performed with them and the reasons for their choice" [11]. Note that the outlined theoretical model became the basis for the statutory definition of the concept of evidence in the "Fundamentals of criminal justice of the USSR and Union Republics"[1], and subsequently became consolidated in the Criminal Procedure Code of the USSR[2] (Article 65), where they were interpreted as any factual data on the basis of which, in accordance with the legally established procedure, the investigating authority, the investigator, the prosecutor and the court establish the existence or absence of a socially dangerous act, the guilt of the person who committed the act, and other circumstances relevant for the resolution of the case. Such data is established by: the testimony of a witness, the testimony of the victim, the testimony of the suspect, the testimony of the accused, expert's findings, physical evidence, records of investigative and judicial actions and other documents (Article 16). In paying tribute to tradition, Article 84 of the Criminal Procedure Code of Ukraine[3] defines the concept of evidence as follows: "Evidence in criminal proceedings is the factual data obtained in accordance with the procedure established by this Code, on the basis of which the investigator, prosecutor, investigating judge and court establish the presence or lack of facts and circumstances that are relevant to the criminal proceedings and are subject to proof. Procedural sources of evidence are testimony, physical evidence, documents, expert opinions".

The interpretation of the definition of the concept of evidence based on the provisions of the specified article provokes much debate, proceeding from the fact that it

[1] Basics of criminal proceedings of the USSR and the Union Republics. Retrieved from http://base.garant.ru/6321209/.

[2] Criminal Procedure Code of Ukraine: Law of the Ukrainian Soviet Socialist Republic (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05.

[3] Criminal Procedure Code of Ukraine: Law of Ukraine (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

cannot cover all the essential aspects of this complex legal phenomenon [12–14]. Furthermore, the legislator fails to acknowledge the fact that evidence is, above all, a product of legal activity in its formation, where logic, psychology, interpretation, and critical reflection of the content of materials by lawyers come first. Therefore, V.D. Spasovych was right in claiming that "… the issue of judicial evidence is not legal. It belongs to the field of logic and anthropology ... it is rooted in philosophy, and must be studied in a separate individual" [15].

The analysis of the content of paragraph 1 of Article 84 of the Criminal Procedure Code of Ukraine also allows to conclude that the "investigative method of producing evidence" is maintained in the law, as the investigators and the prosecutor are the first ones to be mentioned among the participants in the formation of evidence. This implies that, in accordance with the requirements of competitiveness (Article 22 of the Criminal Procedure Code of Ukraine), the materials produced by them are intended, first and foremost, to provide the evidential needs of the accusative authorities, "*volens-nolens*", moving to the "evidentiary curb" the requirement of finding justificatory materials provided for in Article 2 of the Criminal Procedure Code of Ukraine. Therefore, the procedural law through the procedures of disclosure of materials by the parties to the pre-trial proceedings (Article 290 of the Criminal Procedure Code of Ukraine), as well as of the judicial review (Articles 342-364 of the Criminal Procedure Code of Ukraine) compels the prosecution to enter into legal communication with the defence (the defence counsel, the suspect, the accused, the victim, etc.), prompting them to mutually criticize the materials they submit before the court[1].

As a result of such procedural transactions, the evidence of the parties, having gone through the procedural furnace of litigation, becomes full-fledged judicial evidence as a basis for the court to make legitimate and substantiated decisions on the merits of the issues under consideration. Proceeding from this reasoning, Article 23 of the Criminal Procedure Code of Ukraine, at the level of the criminal procedure fundamentals, establishes the requirement of direct examination of testimony, things and documents by the court, and in part 2 of the same rule expressly states that "there can be no evidence in information contained in testimony, things and documents that have not been the subject of a direct court examination, except the cases provided for in this Code". The legislator specifically emphasized the unconditional priority of the judicial method of producing evidence over the investigator, establishing in part 4 of Article 95 of the Criminal Procedure Code of Ukraine the rule that "a court may base its findings only on testimony which it directly perceived during a court hearing. The court shall not have the right to justify the court decisions or to refer to the testimony given to the investigator, the prosecutor". Such emphasis is specifically placed on such an important type of evidence as testimony so as to prevent, in the first place, the use of unlawful interrogation methods at pre-trial proceedings.

[1] Criminal Procedure Code of Ukraine: Law of Ukraine (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

Thus, in this matter, the legislator in the current Criminal Procedure Code of Ukraine positioned itself very clearly and consistently, as the criminal process is not a mono-activity, but consists of two independent and fundamentally different proceedings – pre-trial investigation and judicial proceedings, which, despite the significant differences in purposes and methods of organization, also have an inherent common feature – the necessity to rely primarily on evidence upon rendering appropriate procedural decisions. Therefore, the presence of the concept of "proof" in these legal activities is quite justified.

However, the fundamental difference between these two specifications of the generic concept of "proof" lies in the fact that in the pre-trial investigation, the proof is presented by the materials individually obtained by the prosecution within the framework of the inquisitorial way of their formation, and in the judicial proceedings, the proof already constitutes the substantive content of the judicial means of its production, conditioning the need for a competitive procedure of judicial examination of the materials provided by the parties. Furthermore, an analysis of the provisions of domestic law of evidence suggests that there is a significant difference in the procedures for the production of evidence. For example, in a pre-trial investigation, a certain part of the materials may be formed on the basis of the results of the public (investigative) search actions, and the rest – of the non-public (investigative) search actions, at the same time, the law equates them. In particular, part 1 of Article 256 of the Criminal Procedure Code of Ukraine states: "protocols for conducting non-public (investigative) search activities, audio or video recordings, photographs, other results obtained through the use of technical means, things and documents seized in the process, or copies thereof may be used to prove them on the same grounds as the results of other (investigative) search activities during the pre-trial investigation".

With regard to the judicial proceedings, it can be stated that the Criminal Procedure Code of Ukraine stipulates a special procedure for the formation of materials. For example, Article 352 of the Criminal Procedure Code of Ukraine establishes the procedure for questioning a witness in court (in particular, wearing them in, the order of interrogation of prosecution witnesses and defence witnesses, rules of direct and cross-examination, participation in the interrogation of the victim, the civil plaintiff, the civil defendant, their representatives and legal representatives, etc.). The mentioned plan also refers to the existence of differences in the procedures of conducting such investigative and judicial actions as the interrogation of the victim (Art. 353 of the Criminal Procedure Code of Ukraine), investigation of material evidence (Art. 357 of the Criminal Procedure Code of Ukraine), documents (Art. 358 of the Criminal Procedure Code of Ukraine), audio and video recording (Art. 359 of the Criminal Procedure Code of Ukraine). At the same time, in order to prevent possible loss of the probative value of the testimony of the witness and the victim in view of the existence of a real threat to their life and health, the law provides for a procedure of interrogation by the investigating judge in court (depositing evidence). Thus, Article 225 of the Criminal Procedure Code of

Ukraine establishes the order and procedure for interrogation of a witness, a victim during a pre-trial investigation at the request of the prosecution (with provision to the defence party of the right to be present at such interrogation) in situations of danger to the life and health of the witness or victim, their grave illness, other circumstances that may render their interrogation in court impossible or affect the completeness or accuracy of their testimony.

At the same time, we should factor in that not all the material collected by the parties in the course of a pre-trial investigation can be recognized as judicial evidence based on the findings of their investigation in court. This conclusion follows from the content of paragraph 2 of part 3 of Article 374 of the Criminal Procedure Code of Ukraine, which states that the sentencing analysis contains evidence to confirm the circumstances established by the court, as well as the motives for disregarding particular evidence. This is conditioned by the fact that the materials obtained in the pre-trial investigation are intended to be used only for adjudication during pre-trial proceedings, so they will only be credible and convincing to the parties but remain plausible and unpersuasive to the court. Such an interpretation allows to draw attention to the procedural dynamism of proof as a purely legal phenomenon, the formation of which as a material begins upon pre-trial investigation and ends in a court hearing involving the parties to the prosecution and defence before an impartial court, where it is transformed from a material to a criminal judicial proof.

In this context, particular attention should be paid to such aforementioned attribute of evidence in criminal proceedings, as its admissibility. Admissible evidence used in a criminal case is one of the key points in the court's proper determination of the legally relevant circumstances of the case, and in the end, the achievement of the objectives of justice [16]. In each criminal case, the court investigates and evaluates the evidence and concludes that it is admissible [17]. It is noteworthy that during the pre-trial investigation it is possible to refer to admissibility only as a means of self-control of the parties over the collection of their factual material. Extracurricular activities of persons who are future participants in a criminal case are unilaterally conducted and are only a preparation for bringing to court and ensuring the standard of admissibility.

The admissibility standard is a legalized and validated set of requirements for a form of evidence that substantiates its content [18]. Compliance with the admissibility standard makes information and its medium a "means of proof" suitable for use by a court to establish legal facts in a criminal case. This standard is formed by the requirements for the admissibility of actions of the parties (to court and out of court) to procure information that is derived from prohibitions expressly enshrined in law. There are two elements to be distinguished in the admissibility standard: a) positive, which is associated with the formation of factual evidence; b) negative, which renders the material obtained by the party in the case as inadmissible. This standard is considered by scientists from two standpoints. According to the first, the standard of admissibility is the driver of competition, competitiveness, equality in proving the truth [19]. Proponents

of the other approach believe that such a standard is a means of preserving the monopoly of the state in the face of the judicial and investigative power to establish an "objective truth" [20]. Proceeding from the foregoing, it is advisable to propose an original interpretation of the term "admissibility", under which it is necessary to understand the form of the existence of evidence (information) in criminal proceedings.

It is also prudent to address the problematic issues connected with the theoretical, legislative and enforcement aspects of determining the admissibility of evidence and their relevance in criminal proceedings. An analysis of judicial and investigative material indicates that a substantial part of complaints on violations of lawfulness during investigations, including unilateralism, incompleteness of proof, are not properly perceived by public prosecutors and judicial review officials. As a consequence, complaints are resolved with delay in the judicial and control stages, with a considerable part of them reaching the European Court of Human Rights. The need for a comprehensive analysis of the nature and content of the set of regulations that form the procedural form of "admissibility" and synthesis based on the results of the research, the modern concept of admissibility of evidence in criminal proceedings is conditioned not only by the issues of judicial practice, but is also reasoned by the stagnation of legal science in this aspect [21]. One of the reasons for the problematic situation is the insufficient development of the fundamentals of attributes of admissibility of criminal procedure evidence at the level of theory and methodology of cognition.

In the science of criminal proceedings, there are various interpretations of the admissibility of evidence, which often do not contribute to the correct and proper clarification of the essence of this category. Equally ambiguous are the provisions of the current Criminal Procedure Code of Ukraine regarding the admissibility of evidence. Particularly critical are the rules of criminal procedure legislation that use the term "inadmissible evidence". In our view, the designation of evidence as "inadmissible" contradicts the methodological basis for understanding the essence of the category of "proof" itself. The appearance and existence of evidence in criminal proceedings is possible due to the actual result of the establishment of the special features that characterize the evidence. Evidence cannot be combined with terms such as "inadmissibility" or "inaccuracy". The above indicates the need to improve the rules of the current Criminal Procedure Code of Ukraine, which are related to the admissibility of evidence.

Apart from the legal issues of admissibility of evidence (uncertainty of the regulatory mechanism for regulating the attribute of admissibility of criminal procedural evidence, its verification and evaluation, inconsistency of the applied standard of this procedural institution of legal reality), the reasons of methodological and ethical nature should be outlined. Today, the urgency of the researched subject matter is exacerbated due to the context shift: the tendency for its transfer from the legal plane to the political and economic one has emerged. The conceptual organization of the admissibility insti-

tution ultimately has ethnosocial, religious determination. In this regard, it should be noted that the role and significance of the doctrine of human rights and freedoms, as a more important part of the ethical paradigm of the West for the admissibility of criminal procedural evidence in the domestic science of criminal proceedings, remain understudied. At the same time, according to some domestic experts, such aforementioned phenomenon is negative for criminal justice reform in general [22]. It is necessary to agree with this thesis, moreover, archaic approaches to pre-trial investigation, gathering of evidence – must be eradicated on the way towards the European integration of our country and ensuring the proper protection of human rights.

CONCLUSIONS

Evidence is the core of all criminal procedural law, it defines the type of process. Fair trial standards are a general legal framework for formulation of legal requirements for the proper procedure for the production of judicial evidence. In the structure of the law of evidence itself, a special place is taken by the institution of admissibility of evidence – a system of requirements for the form of evidence that determines its procedural suitability for proof. In a certain way, the level of development of the institution of admissibility of evidence is a measure of the development of the entire criminal process of the state.

The controversy over the legal significance and possible limits of the use of the results of procedural, operational and search, and similar cognitive activity in criminal proceedings does not lose its relevance. Borderline and dogmatic attitude of a considerable part of processualists towards the concept of admissibility of evidence (partially embraced by the legislator as well) equally impedes the effective application of results of criminal intelligence, administrative and "other procedural" activity (including the activity realized by the defence counsel) in criminal proceedings to establish the truth of the case. Within the framework of the research, inter alia, the block structure of the "composition of criminal and judicial proof" proposed by V.P. Hmyrko was supported, and the substance of the procedural evidence in the criminal proceedings was determined. The author's definition of admissibility of evidence in criminal proceedings was also proposed.

An analysis of the provisions of current legislation governing the admissibility of evidence provides grounds for concluding that they objectively determine other procedural institutes for pre-trial proceedings. In this regard, assessing the integrative impact of the admissibility institute on the process of proof, it should be noted that it does not correspond to the current level of threats to economic, national security in the form of cybercrime, organized forms of economic crime and elitist corruption. Thus, the modern criminal process with its inherent instability of admissibility does not effectively protect the national interests of Ukraine and human rights enshrined in the international legal obligations undertaken by our state. Therefore, the current geopolitical

situation and European integration aspirations of our country demand changes in criminal offense, criminal procedure policy and corresponding legal regulation, which should become a legal toolkit on the way to overcoming the issues in the admissibility of evidence and ensuring the effective protection of human and citizen rights.

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Suggested Citation: Shumylo, M.Ye. (2019). Evidence in criminal proceedings: admissibility issues in modern realities. *Journal of the National Academy of Legal Sciences of Ukraine*, 26(3), 202–215.

Submitted: 12/06/2019
Revised: 21/08/2019
Accepted: 17/09/2019