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# RETROSPECTIVE ANALYSIS OF THE RULES FOR GENERAL CONDITIONS OF PROVING IN CRIMINAL PROCEDURE

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**Annotation**
The article deals with the development process of the retrospective analysis of the rules for general conditions of proving in criminal procedure. The author analyses specific features, differences and similar sides of the certain norms of the criminal-procedural code of the Republic of Uzbekistan that were used in practice in 1922, 1926, 1929 and 1959 years comparing with the criminal-procedural code nowadays. And there are also juridical sources, traditional and religious thoughts about countries existent in the territories of our republic in history.

**Keywords:** proving, general conditions of proving, collection of evidence, examination of evidence, interviewer, investigator, public prosecutor, court.

## Introduction

In the ancient states that existed on the territory of the Republic of Uzbekistan, the system of crime and punishment until the 7th – 8th centuries. BC. was regulated on the basis of the law of customs [9, p. 56], as well as the Avesta, which is the main source of the religion of Zoroastrianism [10, p. 74]. 4 books «Avesta» have survived to our days, among which the book «Videvdat», consisting of 22 chapters, being a source of law, consisted of laws regulating legal relations in various fields.

From the eighth to the end of the nineteenth centuries. in government systems on the territory of our country, the system of crime and punishment, along with the norms of customs, was also regulated by Sharia [8, p. 5]. During this period, the supreme judicial authority conducting criminal cases implicitly conducted cases under the control of the khan and the emir [11, p. thirty]. Khan appointed the chairman of this court, the kazi kalon, that is, the supreme judge, and, at the same time, had the right to relieve him of this position. In this regard, in the system of judicial proceedings based on Muslim law, the issue of judicial independence was not actively discussed or even considered relevant [12, p. 65]. In the judicial proceedings of the kazis there was no concept of preliminary investigation at all [8, p. 5].

However, during this period there were certain rules of evidence and its general conditions that were associated with evidence governed by Sharia law. That is, on the basis of Sharia law, Kaziev courts recognized three types of evidence, which consisted of: a) pleading guilty; b) confirmation by testimony of witnesses; c) confirmation by oath. As an obvious proof of the above judgments, one can cite the dictum of Burkhoniddin Marginonius, who, in his work of Khidoy, also expressing his attitude to the Sharia norms of that time, noted: «Confession by the accused of their guilt is the best evidence in determining the truth» [13, p. 2].

Sharia norms are reflected in the sources of Muslim law, which consist of four, namely, the Koran,

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Hadith, Ijma and Kiyas [14, p. 41-51].

The above evidence allows us to conclude that the evidence in that period on the territory of our republic was carried out by the courts of Kaziev and Biys, which conducted legal proceedings under the control of the khan and emir, and their activity in this area was regulated by the norms of customs and sharia. Subsequently, after the transfer of the territory of our country under the control of Tsarist Russia, despite the fact that several legislative acts were adopted in the judicial sphere, the application of the norms of customs and Sharia by the courts of Kaziev and Biys was not prohibited [8, b. 8]. During this period, in our country, along with the norms of customs and Sharia, the Statute of Criminal Procedure adopted on November 20, 1864 [3] was also in force, in which, in Articles 371-376 of Chapter 4 «On the investigation of the crime event», the procedure for collecting material evidence and their storage.

In 1922, the RSFSR Code of Criminal Procedure was adopted [4] (hereinafter the CPC), which, along with the Union republics, also acted on the territory of our country until 1926. Despite the fact that the general conditions of proof were not identified in a separate chapter in this CPC, certain rules were regulated in chapters IV «On evidence» and V «On protocols».

In particular, one can observe the consolidation in article 62 of the CPC of 1922 of the concept of evidence and their types, in article 63 of the procedural rules related to the collection, storage and consideration of evidence, in article 81 the obligatory keeping of protocols during investigative actions and court hearings, in article 82 reflection of evidence in the protocol, in article 83 of the procedural rules related to the signing of the minutes by the chairman and the secretary.

The Criminal Procedure Code of 1922 was in effect on the territory of Uzbekistan for a short period until 1926, during which the clerical work was carried out on the basis of the requirements of this Criminal Procedure Code. As B.Islamov rightly notes in this connection, and 2 Decree of the Councils On Courts ”on the independence of courts and subordination of judges only to the law (adopted on March 7, 1918), and the following normative acts (in particular, «On revolutionary tribunals» of December 3, 1918, «On the People's Courts» of 1920, etc.), as well as the preliminary Code of Criminal Procedure of 1922, also did not make serious changes [12, p. 65-66].

After the CPC of 1922, on June 16, 1926, the first CPC of the Uzbek SSR was adopted [5, p. 72], which entered into force on July 1 of the same year. Starting from this date, the 1922 Code of Criminal Procedure in Uzbekistan was discontinued. In this Code of Criminal Procedure, as well as in the current Code of Criminal Procedure, the general conditions of proof were not allocated in a separate chapter, and the procedural rules related to them were regulated by the norms in the framework of Chapter IV «On Evidence» and chapter V “On Protocols”.

When comparing the chapters and norms of the Code of Criminal Procedure of 1926 and the Code of Criminal Procedure of 1922, a comparative legal analysis of the norms relating to proof, no serious differences can be traced. The chapters and structure of the legal norms of the CPC data are formed in a certain similarity with each other.

An analysis of these circumstances indicates that the legislator, when forming the procedural rules of the 1926 Code of Criminal Procedure related to proving and the evidence that forms its basis, was based on the norms of the Criminal Procedure Code of 1922, and also, on the basis of the circumstances of the

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existing judicial investigative practice, had no need to improve these standards.
Meanwhile, this code is considered the first written legal source in the history of Uzbekistan to regulate the first national criminal procedure relations in the criminal justice industry [12, p. 65].
The CPC of 1926 also acted on the territory of Uzbekistan for a short period, that is, until 1929. The Code adopted on June 29, 1929 and entered into force on August 1 of the same year, unlike the Code of Criminal Procedure of 1922 and 1926. a separate chapter 3, dedicated to «collecting evidence» [6, p. 52].
Despite the fact that this chapter regulates the procedural rules related to evidence (the concept and types of evidence (Article 22), the concept of material evidence (Article 31)), as well as the rules related to the general conditions of proof, that is, if such investigative investigations as a personal search and examination are carried out in circumstances related to nudity, the presence of members of the opposite sex is prohibited, except in cases where the person against whom the investigative action is being taken does not interfere (Art. 39), it is in this chapter that the procedure and procedural conditions for the examination of a witness and expert (Art. 23-27), the procedure and conditions for attracting an expert (Art. 28-30), the procedural provisions related to the search and seizure are located (Art. 33-37), the rules that define the concept of inspection, its types and the procedure for conducting it (Art. 38th).
The Code of Criminal Procedure of the Uzbek SSR, adopted as amended on May 21, 1959 and entered into force on January 1, 1960, also did not separate the general conditions of proof into a separate chapter, and the procedural rules related to them were included in chapter 3, «Evidence in a criminal case» [7 ].
In this chapter, the rules for collecting evidence (Art. 51) and assessment of evidence (Art. 52), which are independent elements of the general conditions of proof, are defined in separate rules. Procedural provisions related to the verification of evidence are given in part 3 of Article 51 «Collection of evidence», which determines that all evidence collected in the case is subject to thorough comprehensive and objective verification by the person conducting the inquiry, the investigator, the prosecutor and the court.
It should be noted that article 52 «Assessment of evidence» of the 1959 Code of Criminal Procedure determines that as subjects of assessment of evidence, the investigator, the person conducting the inquiry, the prosecutor and the court evaluate the evidence based on their internal conviction, based on a thorough, comprehensive, complete and objective study of all circumstances of the case in their entirety, guided by law and legal consciousness. The current Code of Criminal Procedure does not define a procedural provision on the assessment of the totality of evidence, the introduction of this rule into the 1959 Code of Criminal Procedure can be defined as a positive circumstance and, applying it to the current Code of Criminal Procedure, we consider it appropriate to supplement it with the norm «the totality of all the evidence collected should be evaluated in terms of sufficiency for resolution of the case» [15, p. 72].
The study and comparative legal analysis of the content of the norms of Chapter 9 «General conditions of proof» of the current Code of Criminal Procedure and the relevant provisions of the 1959 Code of Criminal Procedure make it possible to draw the following conclusions:

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firstly, in contrast to the 1959 CCrP, the current CCP separately, namely, in Chapter 9, establishes the general conditions for proving legislatively;
secondly, the procedural provision related to the verification of evidence of part 3 of article 51 of the 1959 CPC in content almost completely corresponds to the criteria for checking evidence defined in article 95 of the current CPC, however, in the current CPC a thorough verification of evidence is indicated as criteria for checking evidence and the link of the verification is separately fixed evidence with the collection of additional evidence;
thirdly, despite the fact that the procedural rules of article 52 of the 1959 CPC are fully consistent with the rules of part 1 of article 95 of the current CPC, the current CPC does not resolve the issue of justification for a thorough review of all circumstances of the case when assessing the evidence provided;
fourthly, the 1959 Code of Criminal Procedure does not specify the procedural conditions associated with the need to evaluate each evidence from the point of view of relevance, admissibility and reliability in the case and does not establish the concepts of relevant, admissible and reliable evidence, as well as procedural provisions related to the justification for them in the process of evaluating evidence;
fifthly, the 1959 Code of Criminal Procedure defines the improved procedural provision for assessing evidence considered to be the most relevant today in the theory of criminal procedure law [15, p. 69] that is, a provision related to the assessment of a body of evidence.
It should be noted that after Uzbekistan gained its independence in the Code of Criminal Procedure adopted on September 22, 1994 and entered into force on April 1, 1995 [1], in contrast to the 1959 Code of Criminal Procedure, a separate chapter (chapter 9) was devoted to the general conditions of proof, in which at the legislative level its procedural terms and conditions are fixed. The third section, which is located in the General Part of the Code of Criminal Procedure of 1994, is devoted to evidence and circumstances to be proved, while Articles 85-95 and $95^1$ of Chapter 9 of this section have been enriched by procedural provisions on the general conditions of proof. The norms of the CPC were improved on the basis of modern requirements, and the introduction of a number of amendments and additions aimed at strengthening guarantees of human rights and freedoms [1] (made by more than 70 laws) left an indelible mark on the history of the criminal process.
In particular, the Law of the Republic of Uzbekistan ZRU-No-470 of April 4, 2018 «On Amendments and Additions to Some Legislative Acts of the Republic of Uzbekistan in Connection with the Taking of Measures to Strengthen Guarantees of the Rights and Freedoms of Citizens in Judicial Investigation» was adopted, the basis of which amendments and additions to a number of norms of the CPC were adopted. So, the defense counsel received the authority to collect evidence (Part 2. Art. 87.) and it was determined that the recording of procedural actions in the form of inspection of the scene of an especially serious crime, a search, verification of evidence at the scene, an investigative experiment using video recording means is mandatory (Part 4. Art. 91), as well as factual data, is recognized as inadmissible as evidence if it was obtained by illegal methods or by depriving or restricting the rights guaranteed by law of participants in criminal proceedings Essa or in violation of the requirements of this Code and their use is prohibited (Art. $95^1$).

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Today, one of the important achievements of the reforms is the Decree of the President of the country No. PP-3723 dated May 14, 2018 «On measures to radically improve the system of criminal and criminal procedural legislation» [2] and the application of the «Concept for improving criminal and criminal - procedural legislation of the Republic of Uzbekistan».

We believe that the work carried out in order to ensure the implementation of the provisions of this resolution will be reflected in the preparation of the new draft CPC, taking into account modern requirements and conditions.

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