

EVALUATION OF THE ACCUSED'S TESTIMONY IN THE COURT OF FIRST INSTANCE

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Annotation. *The study is devoted to the scientific analysis of the evaluation of the testimony of the accused in criminal proceedings in the court of first instance, on the basis of which relevant proposals are formulated aimed at improving the quality of the court's activity at this stage of the criminal process. In order to find out the subjects authorized to carry out the assessment of evidence in a judicial criminal process, such categories as «assessment of evidence», «activity of the court in the examination of evidence», «competitiveness» were studied and analyzed. The main requirements for the court's activity in evaluating the testimony of the accused have been defined: compliance with the procedural requirements for obtaining testimony; absence of significant contradictions in testimony; objective confirmation of testimony by other evidence in the proceedings and others. It is emphasized that the testimony of an accomplice should not be the only evidence or be of decisive importance for the decision of the criminal proceedings on the merits. They should be subject to a more thorough verification of credibility, confirmed by the totality of evidence and used as evidence of the guilt of the person giving the testimony. Arguments are given that in order to maintain the necessary balance between the rights of the accused and the accomplice testifying against him, it is necessary to consider the accomplice as a witness when following the procedure of his interrogation in this status, that is, to warn him of criminal liability for giving knowingly false statements and for refusing to give statements.*

Keywords: *criminal proceedings, court, trial, testimony, evaluation of evidence.*

1. Formulation of the problem.

The process of proof in criminal proceedings is the central link of criminal justice in general. Working with evidence occupies an extremely important place in the criminal process. If the evidentiary activity has ended without results and it has not been established by whom and under what circumstances the criminal offense was committed, then the criminal proceedings are pointless.

Scientific interest in the process of proof is absolutely justified and not accidental, since the doctrine of the evaluation of evidence is the most powerful synthesis of legal issues with the most complex problems of worldview, theory of knowledge, logic, psychology and other sciences. It is no secret that a proper evaluation of the evidence is a guarantee of making legal and justified procedural decisions in criminal proceedings. The question of evaluating the testimony of the accused in the court of first instance, as a person who has a vested interest in the criminal proceedings, becomes especially relevant, since the trial is its central stage, where all the evidence is subject to direct examination.

2. Analysis of recent research and publications.

Despite the close attention paid to the evaluation of evidence in recent years [4; 7; 14, p. 485–499; 15, p. 195, 203; 16, p. 48–55], today there is no unity in the understanding of the concept itself, the circle of subjects and the procedure for its implementation, which cannot affect the effectiveness of evidence, since the assessment of the quality of evidence, in particular those contained in testimony, plays a significant role in this process, and its understanding and implementation is the key to the successful implementation of criminal justice. If we analyze the practice of applying the Criminal Procedure Code of Ukraine at the

stage of the trial, it becomes clear that the content of the procedure for the examination of evidence established by law does not reveal its entire essence, it superficially regulates only the external form of the process of proof in the court of first instance, without touching on the practical substantive features of the analysis of each piece of evidence in criminal proceedings. This also applies to the most widespread procedural sources of evidence – testimony of the suspect, accused, victim, witness and expert.

3. Forming the purpose of the article (setting tasks).

To find out the essence of the assessment of the testimony of the accused as a participant in criminal proceedings in the court of first instance, to determine the features and criteria of such mental activity of the court.

4. Presentation of the main research material.

Analysis of the provisions of Part 4 of Art. 95 of the Criminal Procedure Code of Ukraine, according to which the court can base its conclusions only on the testimony that it directly perceived during the court session or received in the manner prescribed by Art. 225 of the Criminal Procedure Code of Ukraine, indicates that “in this way, the legislator clearly emphasized the vector of proof in the adversarial criminal process, recognizing as judicial evidence only those that were directly examined by the court in a court session with the participation of the parties” [12, p. 153]. The above gave reasons for O.H. Shylo it was necessary to distinguish between judicial evidence and evidence collected during a pre-trial investigation [12, p. 153].

Evidence is a dynamic legal phenomenon. It begins to take shape at the pre-trial investigation, and ends at the court session with the participation of the parties in the process [13, p. 98]. When studying the peculiarities of proof at the stage of judicial proceedings, one should proceed from the methodological, in this context, concept of a clear distinction between two meanings of proof: proof as an activity of gathering, checking and evaluating evidence and proof as a justification of a certain statement, a certain thesis [13, p. 102; 15, p. 197], since at the stage of the trial, proof is carried out in terms of both of these aspects.

The division of the evidence process into elements such as collection, verification and evaluation of evidence (Article 91 of the Criminal Procedure Code) is sufficiently established in the doctrine of criminal procedure and is reflected in the Criminal Procedure Code of Ukraine [4, p. 220-221].

In the process of developing the theory of evidence, various approaches to the definition of the concept of evidence evaluation, which has a philosophical, psychological, and practical meaning, which is confirmed by procedural means, were outlined [2, p. 6] and is organically “woven” into the practical activity of collecting and checking evidence [8, p. 182]. We share the approach to the interpretation of evidence evaluation by modern domestic scientists, as a legally regulated mental activity of authorized subjects of criminal proceedings to determine the propriety, admissibility, sufficiency, reliability of evidence and their interrelationship for the adoption of an appropriate procedural decision [7, p. 41; 8, p. 182; 10, p. 322]. This interpretation of evidence assessment is not questionable primarily from the point of view of the legislative definition of subjects and elements of the evidence process, criteria for evidence assessment in criminal proceedings. An assessment of such an important source of evidence as testimony of participants in criminal proceedings is carried out in a similar manner.

Therefore, the evaluation of evidence, in particular those contained in the testimony, is an element of the evidence process, which consists in the mental logical activity of determining such properties of evidence as appropriateness, admissibility, and sufficiency for making an appropriate procedural decision, and their totality - from the point of view sufficiency and interrelationship for making an appropriate procedural decision. At the same time, we consider it undeniable that the evaluation of evidence is the final element of proof, which is closely related to the collection and verification of evidence. Evaluation of evidence accompanies the entire process of proof, but it plays a special role in making final decisions at the stages of criminal proceedings. It, unlike other components of the proof process, having a legal aspect, is a purely logical, thinking, mental process. At the same time, it should be noted that the evaluation of evidence is

carried out both with respect to each of the submitted evidence, in particular with respect to testimony, and with respect to the entire set of evidence.

In contrast to verification, the evaluation of evidence is not combined with any practical actions and is a purely mental, logical activity, the purpose of which is to determine the admissibility, appropriateness, reliability, value (strength) of each piece of evidence and the sufficiency of their totality to establish the circumstances included in subject of proof [9, p. 170]. We agree with the point of view of K.B. Kalinovsky, that the evaluation can be both preliminary, which is carried out during the collection of evidence, and final, which accompanies the rendering of a decision, and the result of the evaluation is recorded in the motivation of the decision [3].

Important in the context of the problem of dealing with such procedural sources of evidence as depositions is the clarification of the question of determining the place and degree of activity of the court in the study and assessment of depositions in the court of first instance.

Based on the analysis of the provisions of the Criminal Procedure Code of Ukraine, which regulate the procedure for conducting court proceedings and outline the essence of the concept of "first instance", T.O. Lambutska defined the powers of the presiding judge in the court proceedings of the first instance, as enshrined in the criminal procedural legislation of the powers of the presiding judge, which ensure the implementation of the scope of the presiding officer's functions and tasks in criminal proceedings in the district, district in the city, city or city-district court, which includes the preparatory court proceedings, trial and adoption and announcement of a court decision [5; 6, p. 92]. Such powers of the presiding judge in court proceedings of the first instance are defined, in particular, in Art. 321, Part 1, Art. 342, Part 1 of Art. 344, Part 1, Art. 348, Part 1 of Art. 349, Part 1, Art. 352, Part 1 of Art. 353 of the CPC of Ukraine. It is the court in the person of the presiding officer, who, using the mechanism provided for in Art. 333 of the CPC, other powers provided by law, while maintaining objectivity and impartiality, the CPC is focused on creating the necessary conditions for the parties to effectively exercise their procedural rights.

In Art. 23 of the Criminal Procedure Code of Ukraine stipulates that the court examines the evidence directly, and the testimony of the participants in the criminal proceedings is received orally. It follows from this that the testimony of the participants in the criminal proceedings as a result of their direct research during the trial is perceived and evaluated by the court on the basis of the so-called internal conviction of the judge [11]. Also, the provisions of the criminal procedural law on the immutability of the composition of the court ensure the direct perception and evaluation of evidence by all judges from the beginning to the end of the trial, guarantee the comprehensiveness, completeness and objectivity of the investigation of all the circumstances of the criminal case, without which it is impossible to issue a legal, well-founded and fair verdict [1, p. 336].

Immediacy of the examination of testimony, things, documents, as a general basis of criminal proceedings, which is defined in clause 16, part 1 of Article 7 and formulated in Art. 23 of the Criminal Procedure Code of Ukraine, is important for the full clarification of the circumstances of the criminal proceedings and its objective resolution. The immediacy of the examination of evidence means the requirement of the law addressed to the court that it examines all collected in a specific criminal proceeding, ensuring direct perception and evaluation of evidence by all judges from the beginning [11]. Therefore, the immediacy of the perception of evidence enables the court to properly investigate and verify them (both individually and in relation to other evidence), to evaluate them according to the criteria specified in part 1 of Article 94 of the Criminal Procedure Code of Ukraine, and to form a complete and objective view of the actual circumstances of a specific criminal proceeding.

The importance of such a direction of judicial activity as the administration of justice requires the creation of such conditions for research into the actual circumstances of a criminal offense that would ensure the adoption of a well-founded judicial decision [7, p. 113]. All subjects of the judicial criminal process are endowed with certain powers, rights and obligations in the field of evidence. The nature of these powers, rights and duties is certainly different and depends on the subject's criminal procedural function, his interest in criminal proceedings, general criminal procedural status, etc. [7, p. 78].

Taking into account the principle of competition, participants in court proceedings enjoy equal rights to research evidence and prove their persuasiveness before the court, and the court is obliged to create the

necessary conditions for the participants in court proceedings to exercise the procedural rights granted to them and direct the judicial investigation to ensure the parties exercise their rights. The powers of the court include a certain toolkit for creating conditions for the parties' activity, independent collection of evidence, their research and evaluation in order to make a well-founded, legal, fair decision on the case. If the activity of the court is aimed at checking and evaluating the evidence, then this activity should be considered as being in accordance with the principle of competition. In the case when the activity of the court is dictated by the goal of creating an evidence base for the prosecution or the defense or strengthening their positions, such activity clearly contradicts the principle of competition.

So, considering the procedural order of evidence examination in the court of first instance and the question of the role and activity of the court, we are faced with the so-called dichotomy: on the one hand, the court cannot be indifferent to establishing all the circumstances in criminal proceedings, and, on the other hand, it must not replace the parties between which the competition is taking place. The court creates equal conditions for the parties to defend their procedural positions. However, this may not be enough to make a legal and fair decision in criminal proceedings.

In our opinion, the court itself is the only subject of evaluation of evidence during the trial, in particular in the court of first instance. At the same time, we agree with the conclusions of T.G. Oksyuta regarding the attribution to the subjects of evaluation of the evidence of the substitute judge. At the same time, the scientist emphasizes that the inner conviction of the specified subject of criminal proceedings can be realized in the adoption of relevant procedural decisions only with the replacement judge acquiring the status of the main judge based on the assessment of each piece of evidence separately, as well as all the pieces of evidence in their totality and interrelationship, with positions of their propriety, admissibility, sufficiency and reliability [9, p. 176]. However, taking into account the fact that the involvement of a substitute judge in the process of proof in criminal proceedings is rather an exception defined by Art. 320 of the Criminal Procedure Code of Ukraine, than the rule, and taking into account the fact that the specified subject can exercise his powers only after acquiring the status of the main judge, we have every reason to assert that the court is the only subject of evidence evaluation in the court proceedings of the first instance, in particular and those contained in such procedural sources of evidence as testimony of the suspect, accused, victim, witness and expert.

The accused, along with the victim, belongs to the subjects who have an interest in the criminal proceedings, and the assessment of his testimony has its own characteristics and requires the justice authorities to have sufficient knowledge both directly about such persons and about the methods of obtaining reliable information and recording it. At the stage of the trial, that is, in the court of first instance, the task of correct and critical evaluation of this evidence by the court arises.

The testimony of the accused is one of the types of procedural sources of evidence, which, under the leadership role of the presiding judge in the court of first instance, is subject to investigation and evaluation along with other types of evidence in criminal proceedings, as well as in comparison with them. The subject of the accused's testimony is determined primarily by the content of the indictment, in particular the procedural document – the indictment, but it can also be any other circumstances included in the subject of proof. An important immanent feature of the testimony of the accused is that they have a dual legal nature: on the one hand, they are a source of evidence in criminal proceedings, on the other hand, they are a means of defense against prosecution [10, p. 322]. This state of affairs undoubtedly affects the process of investigating the testimony of the accused, determines the peculiarities of their assessment in the court of first instance.

It is necessary to determine the main requirements for the activity of the court in evaluating the statements of the accused: compliance with the procedural requirements for obtaining statements; absence of significant contradictions in testimony; whether the conditions in which the event took place and the accused was present allowed the evidence he reports to be accepted, or whether he reported all the circumstances known to him; the influence on the content of the testimony of the peculiarities of the procedural situation and the psychological state of the accused during the pre-trial investigation and in court; objective confirmation of the testimony by other evidence in the proceedings, the weight of possible contradictions in the testimony.

A special case of evaluating the testimony of the accused is the evaluation of the testimony of one of the accomplices of the crime against the other. Most often, such testimony is the key evidence of the guilt of the person against whom criminal proceedings are being conducted. The testimony of an accomplice should not

be the only evidence or be of decisive importance for deciding the merits of the criminal proceedings. They should be subject to a more thorough verification of credibility, confirmed by the totality of evidence and used as evidence of the guilt of the person giving the testimony. Only under such conditions of evaluating the testimony of accomplices can we talk about the guarantee of the accused's right to a fair trial.

In our opinion, in order to maintain the necessary balance between the rights of the accused and the accomplice testifying against him, it is necessary to consider the accomplice as a witness when following the procedure of his interrogation in this status, that is, to warn him of criminal liability for giving knowingly false statements and for refusing to give statements. This approach will make it possible to exclude the possibility of slandering the accused while the co-conspirator retains a personal interest in the results of the criminal proceedings. At the same time, the need to provide the accomplice with additional guarantees of compliance with his constitutional right not to testify against himself stems from the possibility of worsening his legal position, for example, in the event of termination of a plea agreement, or the merging of separate and main criminal proceedings. The current legal regulation allows, in the described situations, to use testimony related to a separate criminal proceeding in the future against the accomplice himself. Granting him immunity, which prohibits pre-trial investigation bodies from using the said testimony in case of proving guilt, will protect the person from a possible violation of his rights and will be an additional confirmation of the veracity of the reported information.

5. Conclusion.

Evaluation of the testimony of the accused in the court of first instance is the mental logical activity of the judge, which consists in the fact that, guided by the law and legal awareness, he considers the information contained in the testimony separately, as well as in combination with other evidence, based on his inner conviction, and determines their appropriateness, admissibility, credibility and sufficiency for making interim and final decisions in criminal court proceedings.

The circumstances of a criminal proceeding can be considered comprehensively and objectively investigated only when the following measures are taken during the trial: all the circumstances to be proven in this criminal proceeding have been clarified; all the evidence necessary for this, which reliably establishes the specified circumstances, has been collected and evaluated. The correct assessment of the evidence, in particular the testimony of the victim, and the proper consideration of all the circumstances of the criminal proceedings as a whole depend on both the correct resolution of the issue of the sufficiency of the evidence and the entire criminal proceedings.

The testimony of the accused as a type of procedural source of evidence has its own characteristics, when obtaining which a number of circumstances must be taken into account. The main requirements of the court's activity in evaluating the testimony of the accused in the court of first instance are: compliance with the procedural requirements for obtaining testimony; the accused's ability to perceive under appropriate conditions the circumstances he reported; influence on the content of testimony of his procedural position and psychological state; absence of significant contradictions in testimony; objective confirmation of the testimony by other evidence in the proceedings, the weight of possible contradictions in the testimony. The testimony of an accomplice should not be the only evidence or be of decisive importance for the decision of the criminal proceedings on the merits, such testimony should in any case be subject to a more thorough verification of reliability, be confirmed by the totality of evidence and be used as evidence of the guilt of the person who gives the testimony.

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