

### **Stages of proving and its objectives: correlation of procedural and criminalistical aspects**

**Abstract:** The stages of proving and its objectives and the structural elements of proving stages are the significant factor in establishing the truth on a case.

In course of carrying out proving the knowledge of criminalistical structure of crime and combination and correlation of the criminalistical stages are an important in determination of tasks formulation's sequence.

An order for institution of criminal case does not reflect a specifics and completeness all aspects of activity of pre-trial production at the stage of crimes' disclosure.

It is given suggestions for inclusion a number of provisions in the CPC, regulating an activity of crimes' disclosure subjects.

**Keywords:** stages of proving; proving tasks; subjects; criminalistical model of proving.

Determining of the criterion of stages proving like a process of moving from single to common, we should take into account that the stage as a part of the common should possess certain features of whole, the part of which it is, i.e. with parameters, characteristics and features inherent to whole proving process, and to be directed to achievement of the general task of proving – establishing of the objective truth.

At the same time the stage should possess with features that distinguishes it from other stages of proving and allows determining it as an independent stage of the whole, and in connection with stated to have clearly defined bounds, and also

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to be system joined to other stages of proving, to interact to them like strictly sequential and interdependent part of the whole process [1, p. 211-212].

The stages of proving might be conditionally compared with the stages of accusation forming as these activities interconnected, and namely:

a) Availability of certain quantity of evidences gives an opportunity to make a system decision, determining the next stage and changing of accusation state;

b) Accusation and proving presents itself activity on disclosure and fixation of constituent parts of the structure of these notions;

c) Activity on determination and fixation these constituent parts is expressed, as rule, in one procedural decision, which provides a process realization of criminal responsibility under recognition by a court the verification of this assertion, i.e. recognition of accusation proved [6, p. 300-302].

In turn, correlation between process of accusation formation and proving process might be presented like correlation of a form and content as process of accusation formation is not just simple accumulation of the parts and features of the whole and transmission of the assertion from qualitative state into other one, but it is also an activity on disclosure of material structure of a crime, which directed in investigation of material and intellectual traces-reflections of this phenomenon.

In addition, in our point of view, the parameters of accusation stages forming is less than proving stages and they do not allow determining the features of each of stages, which distinguish it from other parts of the whole.

If priority to proceed from that reliability is the truth, in cognition of which one might be sure than criterion of definition of any stage in process of the result's achievement of criminal procedural cognition might be considered the establishment of conformity and identity between ideal model of the crime and criminalistical model of concrete crime designed by a subject of proving in process of establishing of the traces- reflections of the "crime" system in appropriate environments and certain stage of combat to criminal.

In this connection, it seems that the stages of proving coincide in full extent only with appropriate stages of combat to crime: with stage of crimes' detection; with stage their disclosure (preliminary investigation); with stage of judicial proving. This is explained with that process' content meets all requirements, which brought to determination of the stage as such, and despite unite algorithm, criminalistical activity on establishing of the elements of material reflections of the "crime" system has a local specifics and possesses with characteristic parameters and particularities, which characterize this concrete stage of proving. In addition, only joint activity on proving is the basis for court decision, and, accordingly, resolution a case on merits [2, p. 56-57].

The following structural elements of the stages' proving might be distinguished in criminalistical aspect: a) establishing of criminal legal matrix of concrete crime; b) designing of criminalistical matrix of application of criminal and criminal procedural law for investigation of concrete criminal case; c) detection, investigation, fixation, checking and assessment of the elements of criminalistical structure of crime, criminal activity, reflection of crime and criminal activity providing a collection of information adequate to criminal legal matrix of crime, carried out with the subjects of proving in compliance with the stage of combat to crime; d) designing of criminalistical model of proving a crime fact, the model of proving criminal activity at each stage of the fight against crime in separate and common criminalistical model of proving – empiric basis of the process of criminal procedural cognition; e) determination of method and tactics of the more effective conducting of checking and evaluation of criminalistical means of proving through fulfillment of tactical operations and actions directed to formation of a system of procedural evidences; procedural realization of the reflection processes of the "crime" system, the stages of this realization; inclusion all necessary participants in processes of proving at all stages crimes' detection and preliminary investigation; systematization of established evidential facts; evidences checking; carrying out a checking system for the process of criminalistical proving; assessment of evidences; formation of the results of proving conduct at preliminary

stage; f) formation and substantiation of the conclusions under determination of the elements identity of established criminalistical model of crime with the elements of its criminal legal matrix upon making of interim procedural decisions at certain stage of proving; under definition of identity of common criminalistical model of the “crime” system with its ideal model – criminal legal matrix – through forming of procedural evidences in order to achieve the objective truth on completion of the proving process [6, p. 291-294].

Resuming above stated, one may make a conclusion that the stage in process of proving is a spatial temporary, objectively procedurally fixed fragment in common system of proving, which characterize with coming of qualitatively determined changes associated with establishing of the traces-reflections of the circumstances of an subject proving to achieve objective truth in criminal proceedings [7, p. 160-161].

Process of proving should be considered like consequent and permanent combination of investigated processes carrying out at all stages combat to criminality, and therefore one may make a conclusion that aims and algorithm of realization indicated activity at each stage is practically common, just the goals of achievement are different. In this connection, consequence of the actions directed to determination of the elements of material structure of crime, and also its reflections in appropriate environments, should also be common.

Basing on above stated, we are distinguishing in activity on proving the following stages, each of which presents a certain activity: a) establishing of criminal legal matrix of crime; b) designing of criminalistical matrix of application of criminal procedural law in respect of investigation of concrete criminal case; c) carrying of maximal information collection on this model-matrix with purpose of establishing all structural elements of the “crime” system like the first objective of criminalistical proving; d) checking and assessment of established actual data, sought facts and criminalistical methods their detection and, correspondingly, - a fact of committed crime, availability of the instruments its commission and criminal behaviour of guilty persons. This comes through a system of tactical

operations and actions, with help of which the subject of proving are checking for example, established fact of committed crime, i.e. they are checking also the sources of criminalistical means of its detection. At this point, in course of this checking through structural, functional, genesis, communicative analysis of established actual data and evidential facts, which allow verifying the fact of committed crime, is solved one significant task – establishing, investigation and checking of the elements of criminalistical structure of criminal activity and criminalistical structure its reflections, moreover the indicated processes mutually induced each other; e) designing of criminalistical model of activity on proving.

We have to make a reservation that all listed stages do not followed in formally contoured strict order one by one like the stage of combat to crime and accordingly the stages of procedural proving. Detection of necessary actual data and checking and assessment of them can be at the same time the element of designing the system of procedural cognition. Wherein, designing of indicated model is fulfilled permanently and is constantly corrected at all stages of proving [3, p. 210-215].

Knowledge of criminalistical structure of crime, like result of conducting of a complex of criminalistical investigations, gives an opportunity to determine a sequence of the objectives formulation in course of proving, and also, accordingly, combination their criminalistical stages.

Objectives of proving are determined with its goals, among of which the first-priority is to provide necessary conditions for fulfilling maximally completed proving conduction in a court in order to achieve objective truth in criminal proceedings.

The objectives of proving might be divided into criminal legal, criminal procedural and criminalistical ones.

In compliance with above stated stages – regularities of proving – may determine the following groups of the criminalistical objectives:

a) disclosure all elements of material structure of crime, i.e. cognition of an object, instrument, means of crime commission, and also a person committed of it.

These objectives directed as to deep cognition of the object so investigation of the traces left by him/her. After criminalistical establishing (proving) of crime commission fact and checking of criminalistical means of proving, the considerable number of tasks appears in connection of establishing of criminal personality. These are: his/her parameters, committed by him/her actions, special features, skills, relationship established through combination of the traces left by him/her;

b) detection of the stages of crime development;

c) exposure of interaction of the elements of crime structure with the elements other systems: which and why the traces left, what they testifying about;

d) cognition of observed facts by the specialists, which is concluded in deep research of the objects, traces, links between them;

e) receiving of information about person committed crime, instruments of crime, motives of crime's commission, time its realization, other subjected to establishing circumstances, which are not directly observed;

f) designing of common scene of an event, bringing up the versions, determination of the actions, establishing of the motives, i.e. construction of criminalistical model of concrete crime proving, and also criminalistical model of proving of criminal behaviour;

g) checking and researching of the facts, additional information, which are necessary for resolution all issues of the subject's proving;

h) more effective transformation of criminalistical model of crime in its procedural form, which is realized at all stages of combat to criminal;

i) liquidation and prevention of contraction to proving processes;

j) providing of participation in proving process all interested persons and execution all principles of proving [7, p. 100-101].

We may additionally distinguish in activity of proving subjects, determining their transforming, organizational, reflective and other functions, but all these objectives, in our opinion, will be led to resolution of collection the main tasks, directed to organization of complex activity on establishing of the traces-reflections of the "crime" system and their procedural realization.

At all stages of combat to criminal, proving of actual data, and first of all, a fact of crime commission is the first and main landmark in process of proving, prerequisite for the further investigation of criminal activity. In connection with this, let's consider this issue in details.

It is generally known, that algorithm establishing of crime's fact on its traces-reflections in appropriate environments determines further direction of activity on detection all subsequent elements of the criminalistical structure of the "crime" system and its procedural realization. It allows ground examining an issue on detection of the elements of crime's criminalistical structure, which are sufficient to establish its fact, and to substantiate making of procedural decision about institution of criminal case at the stage of crimes' detection. It also allows correlating a content of activity on proving of crime committing fact in indicated stage with the same activity in the stages of preliminary investigation and court examination.

Establishing the fact of crime in stage of preliminary investigation is carried out mainly through production of checking and assessment by an investigator the criminalistical means and methods of proving of criminal fact, which are applied with appropriate subjects in the stage of criminal case institution. It happens mainly through using of the system of investigative actions and conducting necessary tactical operations.

Proving of the fact of crime in the stage of trial examination fulfills owing to usage of the system of tactical techniques and methods of proving that earlier produced by prosecutor. They were used as in result of establishing and proving of the fact of crime commission in the stage of its detection and fixation of the fact in the stage of preliminary investigation.

Checking of criminalistical means of proving in process of establishment of the fact of crime commission is an independent and significant element of this stage. Just, checking of established sources of criminalistical information in course its procedural fixation and investigation of appropriate traces-reflections of the "crime" system, i.e. their joint analysis, synthesis and as result designing of

procedural evidences and making procedural decisions on base of them, is one of the important constituents of proving process as crime committing fact, so a whole process of proving like cognitive activity. In addition, the results of complex checking of criminalistical means of proving are also a source of information for designing of criminalistical model of proving.

It seems that proving process of the crime's fact in the stages of preliminary and trial investigation should mainly be considered from positions a research of methods and means of checking and assessment of criminalistical means of proving, and therefore there should be examined the process of proving the fact of crime's commission just in the first stage combat to criminality – in the stage of crimes' detection.

An issue on opportunity of collection and examination of evidences in the stage of criminal case institution in juridical science and practice is solved in various ways. Some scientists believe that evidences' collection in this stage does not produce as there is no procedural activity like such [3, p. 98-100], other ones consider that in this case proving is absent as the law bans production in this stage of investigative actions [5, p. 166-168], in opinion other ones, evidences are gathered and examined from time of criminal case initiation [6, p. 272].

In our point of view, apart procedural moments, there is priory presence such circumstance in this issue that even accepting any from above stated points of view, one may ascertain the fact that a process of detection of criminally relevant facts have a character of establishment of the traces-reflections of criminalistical structure of crime like a base of designing its criminalistical model: just optimization of indicated of criminalistical activity has to lead to optimization its form, i.e. procedural norms and rules its conducting.

Undoubtedly that process of proving will be more effective in case of its maximal approaching on time to crime's event. Therefore, it is not understandable why activity on detection and fixation practically the main component of proving – detection of the traces-reflections of material structure of crime for establishing the fact its commission – in point of view some authors is not a proving.

Issues of pre-investigative checking are traditionally considered to be exceptionally sphere of science of criminal process, which are wrongly recognized by some criminalists, who believed that there is nothing complex in pre-investigative checking and consequently it should not be developed tactical techniques and recommendations on its conducting [4, p. 68-69]. Actually, pre-investigative checking is very important part of law enforcement bodies' work, as just a basement of designing and researching of criminalistical structure of crime and sometimes criminal behaviour like empirical base of procedural proving, is established at this stage. Criminalistical fixation of the process of crimes reflection in material environments, explanations, and documents is carried out at this stage combat to crime. Development of tactical techniques and recommendation of conducting this work cannot be resulted with necessity of optimization of procedural proving at this stage, i.e. indicated processes are inseparable unity.

The process of proving at this stage of crimes' detection might be determined as activity of various authorized bodies, which based on criminalistical knowledge, on providing the process of detection, investigation, checking and assessment of the traces-reflections of material structure of the "crime" system in order to establish objective signs of corpus delicti of crime, and also certain relationships indicating on opportunity its commission with consequent fixation of the results received in procedural regime of the stage of criminal case institution.

From procedural point of view, criteria of differentiation in application of the instruments of cognitive activity in stage of crimes' detection and the stage of preliminary investigation determined clearly with criminal procedural law. Though, despite the content and structure of criminalistical proving is common for all stages of combat to criminality, there are sufficient differences in volume of realization. Proving in stage of crimes' detection is carried out actually by one subject; as rule, this is an investigator. It is possible in some cases involving other persons to the process of proving, and sometimes it is needed to be done, but formally the process of collection of the evidences is conducted by special authorized subjects, provided with article 124 of the CPC.

Proving at the stage of crimes' detection is produced practically always stepwise and presupposes presence of different independent subjects of detection of the traces-reflections of material structure of crime and application wide spectrum non-procedural means on detection of criminalistical information - information about the facts, which necessary to make total decision. In connection with this, there is appeared necessity in clear procedural regulation of indicated activity in stage of crimes' detection as for bodies carried out criminal prosecution so for various inspected and controlled bodies.

Activity on establishing the system of reflection of the facts at all investigated stages of proving is distinguished also on volume and intensity. In process of proving in stage of crimes' detection an emphasis is made on establishing and researching of the traces-reflections of the system of material reflection of a crime, and lesser extent – intellectual and in restricted extent – a social reflection. In process of proving in preliminary investigation all indicated systems are detected and researched in maximal volume. If in the first case the elements of criminalistical structure of crime and their reflections are established in that volume, in which they are needed for detection of crime's fact and initiation of criminal case then in course of preliminary investigation should also be established in full volume criminalistical structures of criminal activity and their reflections.

Forming of criminalistical model of crimes' proving in the stage of their detection is mainly constituent part, the element of designing of criminalistical model of crimes' proving in stage of their disclosure. If in result of crime disclosure (preliminary investigation) is possible "preliminary" identification of criminalistical model of proving with its criminal legal model then at time of realization of proving process in stage of crimes' detection such identification has attitude only to the elements of objective side of indicated model.

Thus, presently, in connection with burning necessity of legislative formulation of procedural stage of crimes' detection, which is not actually included in criminal procedural activity, is appeared the need to determine and extend procedural parameters of proving in this stage combat to criminality.

Provisions of criminal procedural law, which regulate an order of institution of criminal case, do not reflect, in our opinion, the specifics and completeness all aspects of pre-trial production activity in stage of crimes' detection. Moreover, the law says about only time, reasons and grounds to institution of criminal case and about refusal in passing of indicated procedural act, and not on procedural order of establishing the fact of committed crime.

In addition, upon discovering signs of activity's defects in existing systems and presence signs of the corpus delicti of crime in them, there has been burnt necessity to expand the number of subjects, which are obliged to act in compliance with provisions of the CPC norms. These powers might be given to subdivisions of state bodies, which functions are controlling and inspecting.

It seems necessity to fix in the CPC a number of provisions regulating activity of the subjects of crimes' detection, in compliance with which the officials of these bodies through consent of prosecutor could have given the instructions to the inquiry bodies on conduction, for example, necessary operational searching measures; on carrying out forced deliver the persons evading of explanations' giving; on seizure through appropriate registration necessary documents, and also comparative samples for expert and other investigation etc.

## **References**

1. Bilibin R.R., Sergeev S.A. Dokazatel'stva i dokazyvanie v ugovnom protsesse [Evidences and proving in criminal process]. Ufa, 2007, 426 p.
2. Hajiyeva M.G., Hajiyev N.G., Suleymanov J.I., Shiraliyeva S.J. Dokazyvanie i dokazatel'stva [Proving and evidences]. Uchebnoe posobie [Tutorial]. Baku, 2002, 96 p.
3. Davydov M.I. Dokazyvanie i dokazatel'stva v ugovnom protsesse [Proving and evidences in criminal process]. Moscow, 2006, 369 p.

4. Kokorev L.D., Kuznetsov N.P. Ugolovnyi protsess: dokazatel'stva i dokazyvanie [Criminal process: evidences and proving]. Voronezh, 1995, 268 p.
5. Kriger A.N., Barsukov A.I. Dokazatel'stva i dokazyvanie [Evidences and proving]. Moscow, 2006 307 p.
6. Lukavin I.P., Lukavin N.I. Dokazyvanie i dokazatel'stva v ugolovnom protsesse [Proving and evidences in criminal process]. Krasnodar, 2007, 411 p.
7. Snegirev I.P. Dokazyvanie v ugolovnom protsesse [Proving in criminal process]. Kazan, 2006, 211 p.