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### **Problems of proving in international relationships**

**Abstract:** Recent events with poisoning of the Skripals and falsification of evidence of using chemical weapons in the Syrian town of the Duma allow asserting about essential lacks of international system of proof, and to be exact, about its lack.

It cannot be considered as evidence only relative knowledge about events of the reality since their reliability should be proved in advance, and the means through of which it might be established, cannot be other than evidences on proving subject.

Epistemological requirement, which brought to a content of knowledge received in proving process, is manifested in that it should save those information, which is inherent the both a mapping and mapped. Otherwise informative aspect of the mapping, i.e. information cannot be invariant of an original. Correspondence of a content of evidence to the subject of proof determines the relevance of the proof, and consequently, functioning of it as the means of cognition.

A great number of information about facts of objective reality is revealed in process of proving. Separation of unnecessary information and, conversely, establishing of the relevance of information to the subject of proof is one of the most important tasks of proving as it allows from established fragments of the reality to design an integral picture of an event.

Every fact is unrepeatable, irreplaceable, and unique in its kind as that or other phenomenon linked with a concrete place, time and individual features.

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Distinguishing that or other phenomenon as a fact, a cognizant takes some part of the reality in all variety its links and relationships with surrounding world; every link or relationship characterizes a fact from its side, providing it with special property. Phenomenon, event becomes a fact when its cognition is necessary, significantly for resolution of some tasks, which put before a subject. Not any phenomenon is a fact, and only those, which separated from surrounding world and involved in sphere of cognitive activity of a cognizant. Due to a remoteness of a subject from a fact with space-time it cannot be directly studied, and it is established through intermediate link, i.e. indirectly.

**Keywords:** international relationships; proving; proofs; fact; factual data; poisoning of Skripals.

There is no a single concept of proof and criteria its assessment in international relationships that enshrined in the backbone documents. Nevertheless, a number of international treaties concerning the global issues of criminal, criminal procedural, administrative, civil, arbitration and other branches of the law allows synthesizing a content of indicated institutions, to determine their kinds, elements, correlations [7; 9; 11].

To a certain extent this is attributed with national legislations, which have in its base the similar provisions of law of evidence.

Analysis of facts of international cooperation in various spheres of human activity allows asserting that basically as proofs in international relationships are sustainably used explanations of individuals, expert opinions, materials evidences, documents and materials that received in result of operation, search and organizational measures, and under the proving are understood cognitive, communicative and attesting acts of the subjects of interaction.

However, recent events with poisoning of the Skripals and falsification of evidence of using chemical weapons in the Syrian town of the Duma allow



asserting about essential lacks of international system of proof, and to be exact, about its lack.

It is well known and generally accepted that every proof must be evaluated for its relevance, admissibility and reliability, and the body of evidences should be determined in an aspect of their sufficiency for establishing relative truth or recognition as corresponding to the reality those or other events (phenomena).

This is common truth that found its reflection in international papers, accepted as basis of proving actually in all states, which pretending to be called as democratically legal ones.

Before talking about proving, it is necessary first to make clear how the notion 'proof' should be interpreted. When its defining the scientists were expressed rather discrepant opinions, and the core of discordances in determining of the concept of 'proof' is concluded in the nature of the key notion 'factual data', and namely – whether it includes the facts and information on the facts, and whether the means of proving and evidential facts are covered by it.

In this connection, it seems necessary to establish a relation of the concepts of fact, factual data, information about the fact, sources of the proofs and evidence.

In the theory of law of evidence there have been expressed the point of views concerning to inadmissibility of identification of proofs with factual data [2, p. 19-20]. Some scientists have asserted that relation between proofs and factual data is the relation of the means and aim. Moreover, circumstances are subjected to establishing through evidential data, but not with factual data, as the factual data cannot be identical to the evidences like it cannot be identical information about some object to the object itself. Thus, it has been concluded that a lawmaker has not distinguished the procedural means and an aim of proving [3, p. 50].

Number of scientists has understood under the proofs also the factual data, which establish or refute appropriate circumstances and the sources of which these data are drawn [6, p. 64-65].



Considering the proofs as a phenomenon that has two-component basis, M.S. Strogovich wrote that proofs, first, this is those facts, on basis of which is established a crime, guilt or innocence of a person in its commission, and other circumstances of a case, of which depend a level of responsibility of a person. Second, proofs are those sources that provided by the law, of which an investigation and court receive information about the facts that have significance for a case and through of which these facts are established [12, p. 288-289]. The scientist had again said, in particular, about information, which should be received by the subjects of proving as otherwise it does not appear an opportunity to speak about proofs like on the facts on basis of which crime is established.

From our point of view, the standpoint that considers evidences like indissoluble unity of content, i.e. factual data and procedural form, i.e. the sources, in which these data are contained and of which they are received, has soundly found its confirmation in the literature [13, p. 211]. Wherein a term ‘sources of evidences’ is determined as a notion, which is no abstract construction that deprived any real content and significance. On the contrary, the notion of ‘sources of evidences’ is given great theoretical and practical value, since it is impossible a successful implementation of proving process without it [1, p. 42-43].

Let’s consider what, from criminalistical standpoint, are ‘the sources of proofs’. On a core, criminal procedural proofs are the products of reflective processes. This is due to the fact that appropriate knowledge on factual circumstances of case the subjects of proving can obtain only through division of the fragment of objective reality, i.e. a phenomenon, state, their part, which fulfils a function of procedural source. Informative side of functionally distinguished element of the structure of examined source might be considered as criminalistical information. However, specifics of criminal procedural cognition is concluded, in particular, in the fact that the rules of admissibility prescribe to a subject of proving to use as sources not any traces-reflections of the investigated phenomena, which



principally could be give necessary information, and only those, which envisaged by law. This allows defining the sources of procedural means of cognition like phenomena of objective reality that fallen into the sphere of criminal procedure activity, their states, which potentially capable in process of proving to give about them or the circumstances, which have significance for establishing criminalistical structure of a system of ‘crime’ [8, p. 79-80].

Separated by a subject of proving the condition of procedural source in real epistemological relations receives a form of appropriate kind of proofs, and unity of relevant content and admissible form provides the messages with an alarm color and the status of procedural means of cognition [10, p. 110].

Nevertheless, main in disclosure of nature of proof is an issue on content of the notion of factual data. Above considered standpoint, according to which in number of ‘factual data’ could include only the facts of objective reality, seems insufficiently justified for a number of reasons. So, the facts, on basis of which is established crime, should be considered as a phenomenon of objective social reality. They exist regardless of our consciousness, and accordingly, of consciousness of that whether persons carrying out the proving process aware of them.

It cannot be considered as evidence only relative knowledge about events of the reality since their reliability should be proved in advance, and the means through of which it might be established, cannot be other than evidences on proving subject.

Studying this notion, a number of authors note that there is no grounds for unambiguous conclusion about the fact that ‘factual data’ is only the data on the facts or that “namely data on the facts play decisive role in proving process” [12, p. 224]. Since the logic of proving presupposes establishing and substantiating of proved judgements with help of others, already proved, is made a conclusion about the fact that not only information on the facts, but also established facts serve as



the means of cognition of sought, not yet established circumstances. Other words, 'factual data' are seemed also like information on the facts and as the facts themselves [15, p. 12].

Thus, it appears relationship of three notions: factual data as body of information of the facts and the facts themselves, sources of evidences and proof.

It seems necessary to establish the priorities in these notions, and also to determine how should be interpreted a notion of 'fact'. From our point of view, the fact should be understood as examined event, information, phenomenon, action, inaction, thing, item that is how that phenomenon of objective reality, on which directed activity of proving subject. Data about the fact is information received with help of which we may cognize the fact [5, p. 98-99].

From our standpoint, information about facts should have attitude to an ultimate fact, i.e. to be capable to take off informational uncertainty on the facts that subjected to establishing – to be possessed of relevance to a case.

Epistemological requirement, which brought to a content of knowledge received in proving process, is manifested in that it should save those information, which is inherent the both a mapping and mapped. Otherwise informative aspect of the mapping, i.e. information cannot be invariant of an original. Correspondence of a content of evidence to the subject of proof determines the relevance of the proof, and consequently, functioning of it as the means of cognition. If proceed from the fact that an evidence is a product of reflectance relationships between a subject of cognition, which carries a specifics of the circumstances researched, then we should recognize that in the base of nature of relevance of procedural means of knowledge formation is the regularities of transmission and saving of invariant, which is inherent to the means of cognition, procedural source and original. The fragments of objective reality act as the originals, which are established in a certain order [6, p. 60-61].



A great number of information about facts of objective reality is revealed in process of proving. Separation of unnecessary information and, conversely, establishing of the relevance of information to the subject of proof is one of the most important tasks of proving as it allows from established fragments of the reality to design an integral picture of an event.

In addition, the facts, which are attributed to a case, should be collected and fixed in an order that provided by law, i.e. to have an admissibility to the case.

Equally important, that law limits with number of terms the use of information of the facts as proofs, which are brought the both the factual data and the sources.

Now we try to consider a notion 'fact'. Philosophic literature gives various interpretations of it. A fact is phenomena themselves, items and events; a fact is consider being our sensations and perceptions of things and their properties; under the fact is understood irrefutable theoretical provisions, with which they want to prove something or refute [14, p. 339].

Emergence, existence of a fact does not depend on a subject of cognition; a cognizant studies what has already happened or exists in the reality.

Every fact is unrepeatable, irreplaceable, and unique in its kind as that or other phenomenon linked with a concrete place, time and individual features. Distinguishing that or other phenomenon as a fact, a cognizant takes some part of the reality in all variety its links and relationships with surrounding world; every link or relationship characterizes a fact from its side, providing it with special property. Phenomenon, event becomes a fact when its cognition is necessary, significantly for resolution of some tasks, which put before a subject. Not any phenomenon is a fact, and only those, which separated from surrounding world and involved in sphere of cognitive activity of a cognizant. Due to a remoteness of a subject from a fact with space-time it cannot be directly studied, and it is established through intermediate link, i.e. indirectly [4, p. 90-91].



It should be especially emphasized that in international relationships we may talk on various meaning of a word 'fact'. We may talk on sought-for facts, about the facts, which being established stop to be sought ones, on main and evidential facts, about those, which constitute a component of proving subject and those, with help of which proving subject is cognized. This can be verified by analyzing the interaction of direct and indirect proofs. If direct evidence directly indicates the sought-for fact, then indirect evidence - through evidential facts that form the facts-proofs in a multifaceted system of the facts [8, p. 58-59].

Facts-proofs are the result of researching of a subject of proving. They can and should be used in proving and are, on core, the structural elements of conceptual framework of an activity on proving that is law of evidence, however, they are not an element of notion 'proof'. The fact that recognized to be proved and possible in turn used in logical proving as proving one is not the proof, and it constitute an element of mapping in proving process [8, p. 77].

Essentially, proof is information, which involved in discussion and justification of a certain thesis, i.e. a) information in discussion should be 'involved' by somebody; b) wherein, it is discussed namely information as thought model or data of facts, but the facts themselves, as phenomena of objective reality and c) factual data is extracted from appropriate to the proving stage sources the elements of criminalistical system of mapping of an event in material environments, testimonies, documents, that is what criminalistic science is studying. Wherein, traces of mapping of material structure of an event and behaviour like information about them might be fixed through examining of material, intellectual or social mapping of a system itself [4, p. 90].

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