

Eureka Journal of Humanities and Social Research (EJHSR)

ISSN 2760-4934 (Online) Volume 2, Issue 2, February 2026



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<https://eurekaoa.com/index.php/4>

GENERAL ASPECTS OF THE PROOF PROCESS IN CRIMINAL PROCEEDINGS

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Abstract

Evidence plays a very important role in criminal proceedings. If the evidence gathering process proves fruitless and it cannot be established who committed the crime and under what circumstances, then the objectives of the criminal proceedings can be considered unfulfilled. This article analyzes issues related to procedural activities for proving evidence in criminal proceedings, which consist of collecting, verifying, and evaluating evidence in order to establish the circumstances relevant to the lawful, reasonable, and fair resolution of the case.

Keywords: Evidence in criminal proceedings, subject matter of evidence, limits of evidence, circumstances to be established in a criminal case, system of general conditions for evidence, subjects of evidence.

Аннотация

Доказывание занимает очень важное место в уголовном процессе. Если деятельность по доказыванию окажется безрезультатной, и не будет установлено, кем и при каких обстоятельствах совершено преступление, то можно считать, что цели уголовного процесса не достигнуты. В статье проанализированы вопросы процессуальной деятельности по доказыванию в уголовном процессе, которая заключается в сборе, проверке и оценке доказательств с целью установления обстоятельств, имеющих значение для законного, обоснованного и справедливого разрешения дела.

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ISSN 2760-4934 (Online) Volume 2, Issue 2, February 2026



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Ключевые слова: доказывание в уголовном процессе, предмет доказывания, пределы доказывания, обстоятельства, подлежащие установлению по уголовному делу, система общих условий доказывания, субъекты доказывания.

Introduction

According to the Criminal Procedure, proof is a procedural activity consisting of the collection, examination and evaluation of evidence for the purpose of ascertaining the truth about facts that are significant for the lawful, well-founded and fair solution of the case.

According to Article 22 of the Criminal Procedure Code of the Republic of Uzbekistan, only information collected, examined and evaluated in the manner provided by law may be used to ascertain the truth in the case.

We have noted that the purpose of proof is to ascertain the truth. However, the concept of truth cannot specify exactly which facts must be established in a given case. For this, another concept – the subject matter of proof – serves. It is well known that every criminal case is unique. At the same time, it is possible to identify circumstances common to various events.

The subject of proof is the set of facts which, regardless of their nature, must be established in every criminal case and which are of legal significance for the substantive resolution of the case.

The object of proof includes the following:

- 1) the object of the crime; the nature and extent of the damage caused by the crime, the circumstances describing the identity of the victim;
- 2) the time and place of the offence, the manner in which it was committed, as well as other circumstances specified in the Criminal Code; the causal link between the act and the socially dangerous consequences that occurred;
- 3) that the offence was committed by this person;

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4) whether the offence was committed with direct or indirect intent, or through negligence or a lack of foresight, as well as the motives and aims of the offence;
5) circumstances describing the identity of the accused or defendant¹
Evidence plays a crucial role in the criminal process. If the evidence-gathering exercise ends in failure and it cannot be established who committed the crime and under what circumstances, it may be considered that the objectives of the criminal process have not been achieved. Moreover, if the damage caused by the crime is not compensated and above all, the person who committed the offence is not held to account, there is no doubt they will continue their unlawful activities.

Moreover, if an official with the appropriate authority makes an error during the evidential process, serious consequences may ensue. In particular, the prosecution of innocent individuals is a clear illustration of this. Therefore, the more complete and skilful the proof-gathering, the more assured will be the legality and justification of the decisions taken in criminal proceedings.

There are numerous circumstances that must be established in a criminal case, each with its own characteristics and features. Fully and comprehensively establishing these circumstances means defining the scope of proof.²

The evidential threshold refers to the activity of determining the scope of the evidence and its sources required to confirm the soundness of the conclusions drawn in a case, as well as the investigative versions and the circumstances that must be proven.

The correct determination of the scope of proof is of crucial importance for the administration of justice in a criminal case.

The concepts of the object of proof and its limits are intrinsically linked and interdependent. The object of proof comprises the facts that constitute the factual basis for determining liability and punishment and that must be proven in a

¹ Criminal Procedure Code of the Republic of Uzbekistan <https://www.lex.uz/acts/111453>

² Criminal Procedure Law. Special Part. (collective authorship) – T.: ILM-ZIYO, 2011. – 544 p.

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criminal case, whereas the scope of proof comprises the evidential materials that form the factual basis for defining the object of proof.

In turn, the scope of proof depends on the subject matter of proof and it is on this basis that the facts which must be established in a criminal case are gathered, examined, assessed and the relevant procedural actions are carried out. The scope of proof is the range within which facts (circumstances) forming part of the object of proof are identified and examined. It ensures that the facts and circumstances included in the object of proof are investigated. In addition, the versions and analyses in a criminal case are also examined.³

The standard of proof is the same for all stages of the criminal process, and may include the following:

- evidence confirming that an offence was committed (time, place, etc.) and the circumstances as to whether or not the elements of the offence are present;
- facts that establish or refute a person's guilt;
- facts that indicate the degree of social dangerousness of the crime committed;
- facts that establish the nature and amount of damage caused by the crime;
- circumstances establishing the cause and conditions that enabled the commission of the offence. Thus, in criminal proceedings, while the object of proof denotes what is to be established in the case, the scope of proof determines the extent and limits of the examination of the facts in the case.

The general conditions for proof are laid down in Chapter 9 (Articles 85–95) of the Code of Criminal Procedure, and failure to comply with them renders the results of any investigative action inadmissible as evidence when considered by the court. Proof is a complex process that permeates the entire criminal procedure and ensures the fulfilment of the criminal process's objectives through the ascertainment of the truth of the case.

The substance of proof consists, first and foremost, of a set of procedural actions aimed at gathering, examining and evaluating evidence to ascertain the truth

³ Criminal Procedure Law. Textbook. Academy of the Ministry of Internal Affairs. 2019. Collective of authors. Page 139.

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about the facts that are significant for the lawful, well-founded and fair resolution of the case⁴. These actions are carried out by an official of the body conducting pre-investigation checks, an investigator, an inspector, a prosecutor, or a court. All circumstances that need to be proven in the case must be examined thoroughly, comprehensively, fully, and impartially. Every piece of evidence, which can both prove and disprove the defendant's guilt, must be assessed in terms of its relevance, admissibility, and reliability in accordance with Article 95 of the Criminal Procedure Code of the Republic of Uzbekistan⁵.

The general system of conditions for the conduct of proceedings includes the following:

- the parties to the proceedings;
- the collection of evidence;
- the protection of the rights and legitimate interests of citizens, enterprises, institutions and organisations during the proceedings;
- the protection of state secrets;
- recording evidence in the minutes;
- auxiliary methods for recording evidence. Appendices to the minutes;
- conducting investigative actions via video conference, its grounds, conditions and procedure, and recording the process and its results;
- verifying the accuracy of the recording of evidence;
- verifying cases of refusal or inability to sign the record;
- evaluating the evidence.

The purpose of proof is to resolve the case lawfully, reasonably, and fairly by establishing the objective truth of the criminal matter.

Establishing the truth in a criminal case means the following:

- 1) solving the crime;
- 2) identifying the person(s) who committed it;

⁴Comments on the Criminal Procedure Code of the Republic of Uzbekistan. Tashkent. Adolat. 2020. p. 145.

⁵ H. Ismoilov. Criminal Procedural Law. Textbook. Tashkent, 2023. p. 29.

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- 3) the fair punishment of the guilty;
- 4) the prevention of innocent people from being subjected to criminal liability and punishment;
- 5) ensuring that the decisions reached are lawful and well-founded;
- 6) to assist in fostering in citizens a respect for the law;
- 7) to prevent crime;
- 8) to guarantee the rights and legitimate interests of citizens in criminal proceedings.

According to Article 463 of the Criminal Procedure Code of the Republic of Uzbekistan, a conviction may not be based on assumptions and may only be passed if the defendant's guilt in committing the crime has been proven during the trial. A conviction may only be based on reliable evidence gathered as a result of examining all possible circumstances of the crime, addressing all deficiencies revealed in the case materials, and resolving every doubt and contradiction that has arisen. Consequently, a guilty verdict may be based on a defendant's confession of guilt made during the investigation or at trial only if it is corroborated by other evidence gathered in the case and examined in court.

The subjects of proof are understood to be the bodies and individuals who participate in the process of proof and possess the relevant rights and obligations. The scope of these subjects is very broad, but their powers differ. Therefore, it is appropriate to classify them into groups based on the following criteria:

1. State bodies and officials responsible for conducting criminal proceedings;
2. Individuals with personal or representative interests in the case;
3. Persons in possession of evidential information;
4. Other persons performing technical and auxiliary functions.

The first group includes pre-investigative checks, inquiries, investigative bodies (at pre-trial stages) and the court. The distinguishing features of these state bodies and officials are as follows:

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only these state bodies and officials are authorised to make a decision in the case, that is, to draw conclusions as to whether the relevant circumstances have been proven or not;

They possess the greatest powers during the evidentiary process and are entitled to conduct judicial and investigative actions to collect, examine, and evaluate evidence as specified by law. They may require other proof-gathering subjects to provide evidence; these state bodies and officials are burdened with the obligation to prove the criminal case.

The second group includes the defendant, their defence counsel, the complainant, the civil claimant, the civil defendant and their representatives. The common characteristic of these parties is that they can actively participate in the examination of evidence.

During the trial, they act as equal parties. However, unlike the participants in the first group, they do not have the authority to make decisions on the case. They can only present evidence. Thus, the main forms of their participation in the proof process are presenting evidence, making requests and taking part in investigative actions. Furthermore, these individuals also participate in the proof and substantiation phase: that is, they can take part in the court proceedings and express their conclusions and opinions on whether the prosecution's case has been proven⁶.

The third group includes persons who are sources of evidential information, such as witnesses, experts and specialists.

The fourth group includes an interpreter, a judge's assistant, and jurors.

It is evident that the collection of evidence can be carried out by an officer of the pre-investigation inspection body, an investigator, an inspector, a prosecutor, and a court. The right to participate in the collection of evidence is held by the suspect, the accused, the defendant, the defence counsel, the civil claimant, the civil defendant, and their representatives, the public prosecutor, and the public

⁶ H. Ismoilov. Criminal Procedural Law. Textbook. Tashkent, 2023. p. 29.

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defender. Finally, the right to participate in the gathering of evidence also extends to witnesses, experts, specialists, interpreters, jurors, as well as other citizens and officials who are involved in the exercise of their rights and the performance of their duties related to the collection, examination and assessment of evidence in accordance with the procedure established in the criminal procedure code.⁷

The nature of proof, which involves the collection, examination and evaluation of evidence, is also characteristic of pre-investigation checks, enquiries, preliminary investigations, the prosecutor's office and the courts, as well as the relationships that arise between these bodies and citizens. Proof exists at all stages of the criminal process, since at every stage the correspondence of facts to reality must be established in the prescribed manner. Depending on the tasks of the various stages and the characteristics of the procedural forms, the nature of the circumstances, the sufficiency of the evidence, the means of proof and the methods of obtaining evidence may vary. However, the primary objective of the activity of collecting, examining and evaluating evidence – establishing the truth of the case – remains unchanged.

Gathering and handling evidence in investigations and court proceedings: questioning the suspect, the accused, the defendant, the witness, the victim, and the expert; confrontations; identification parades; examining statements at the scene of the incident; seizure; search; inspection; certification; exhumation of a corpse; conducting experiments; taking samples for expert examinations; commissioning expert examinations and investigations; are collected by accepting items and documents submitted, intercepting communications via telephone and other communication devices, and by conducting operational search measures.

⁷ On 14 May 2020, Law No. 617-FZ was adopted, introducing amendments and additions to the Criminal Procedure Code of the Republic of Uzbekistan aimed at strengthening the protection of the rights and freedoms of citizens participating in criminal proceedings. <https://lex.uz/docs/4812289>

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The defence is also entitled to collect and present evidence in the criminal case, which is added to the case materials, as well as a pre-investigation check, pre-investigation checks, the investigation and preliminary inquiry, and are mandatory during the trial of a criminal case. The defence counsel has the right to question persons possessing information relevant to the case and to obtain written statements from them with their consent; gather evidence by sending enquiries to state bodies and other authorities, as well as to enterprises, institutions and organisations and by obtaining from them certificates, characterisations, explanations and other documents.

Thus, procedural proof-gathering refers to the activity of identifying, collecting, examining and evaluating evidence by the pre-investigation and investigative bodies, the prosecutor and the court, with the assistance of other participants in the process as provided for by law, as well as the relationships that arise during this activity with the aim of establishing the truth of the case.

Elements of proof:

- identification and collection of evidence – the investigator, the prosecutor, the court identifying the source of factual information, the activity of identifying the necessary information and recording it, which is carried out in the forms and methods provided for by the criminal procedure law. Evidence is collected by state bodies and officials in accordance with the requirements of Articles 22 and 86 of the Criminal Procedure Code of the Republic of Uzbekistan. Evidence may also be submitted by the suspect, the accused, the defence counsel, the victim, the civil claimant, the civil defendant, their representatives, any citizens and organisations. Evidence is collected at any stage of the criminal proceedings in the form and by the methods that arise from the procedural characteristics of each stage;
- the verification of evidence – the activity of the investigator, prosecutor, and court in thoroughly, comprehensively, and impartially establishing the reliability of factual data and the suitability of the sources from which it is obtained for

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correctly determining the circumstances of the criminal case. Evidence is examined at all stages of the proceedings. Both the factual information and the sources from which it is obtained must be scrutinised, both individually and in conjunction with other available evidence. Evidence is examined by state bodies and officials involved in the adoption of procedural decisions. Other participants in the process merely take part in the examination of evidence.

Evaluation of evidence is the intellectual activity of judges, the prosecutor, the investigator, and the inquirer, during which they adhere to the law and legal consciousness, based on a full, comprehensive, and impartial examination of the evidence, on the basis of their inner conviction, they decide on the relevance, admissibility and reliability of each piece of evidence and whether it is sufficient for making procedural decisions. Evidence is assessed at all stages of the proceedings. The essence of the evaluation of evidence consists in determining its relevance, admissibility and reliability, and its sufficiency to establish the facts that are the subject of proof in the criminal case. The law sets out general requirements for the assessment of evidence, which are uniform for all stages of the criminal proceedings.

Evidence shall be deemed relevant to the case only if it consists of information concerning facts or objects that confirm, refute or cast doubt on conclusions regarding existing circumstances material to the criminal proceedings.

The defendant's (the victim's, the witness's) published statements must be examined by the court during the trial.

When the judgment is based on evidence that both incriminates and exonerates the defendant, the court must set out the content of such evidence and provide an appropriate assessment.

If several defendants are accused of committing the crime in question, or if a defendant is accused of committing several crimes, the court must in its judgment

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set out, analyse and draw conclusions regarding the evidence for each defendant and on each count.⁸

Evaluating evidence, as an element of the process of proof, is the intellectual, logical activity of the inquirer, investigator, prosecutor, judge or court, based on which they determine the relevance of each piece of evidence to the case, its admissibility and significance, and its sufficiency to establish the facts that are the subject of proof in the criminal case, and interim and final decisions are made on the basis of the body of evidence available at a particular stage of the criminal proceedings.

In the Criminal Procedure Code, the assessment of evidence, whilst referred to the internal conviction of the aforementioned persons, also defines the conditions for the formation of this assessment, as well as the procedural form for expressing the assessment that has been carried out. It ensures the harmony between the subjective factor of inner conviction and the objective factor, which consists of the set of evidence reviewed in the evaluative conclusions on the case.

Internal conviction must be considered in two respects when assessing evidence – both as a method of evaluating evidence and as the outcome of such an evaluation. Internal conviction as a method of assessing evidence is guaranteed by the fact that it does not depend on the evaluation of evidence by the court, prosecutor or investigator or by any other body at any stage of the proceedings; it is secured by the absence of rules conferring priority on one type of evidence over another. Internal conviction, as the result of evidence assessment, signifies the investigator, the investigator and the judge's belief in the reliability of the evidence and the correctness of the conclusions reached during criminal-procedural proof.

During the evidential process, safeguarding the rights and legitimate interests of individuals, as well as state secrets. In the evidentiary process, namely the

⁸ Comments on the Criminal Procedure Code of the Republic of Uzbekistan. Editor in Chief: Prof. G. A. Abdumajidov. – Tashkent: Tashkent State Institute of Law Publishing House, 2009. P. 157.

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collection, examination and evaluation of evidence, the protection of the rights and legitimate interests of citizens, as well as of enterprises, institutions and organisations, must be ensured. Therefore, in accordance with Article 88 of the CPC, the following are prohibited in evidence:

- 1) committing acts that are dangerous to the lives and health of individuals or that demean their honour and dignity.
- 2) obtaining statements, explanations, conclusions, the carrying out of experimental actions, and the preparation and submission of documents or items by means of violence, intimidation, deception and other unlawful methods.
- 3) conducting investigative actions at night, i.e., from 10 p.m. to 6 a.m. To prevent a crime that is being prepared or committed, to prevent the destruction of evidence or the escape of a suspect, except in cases where it is necessary to reconstruct the state of the event being examined during the experiment.

The complex nature of criminality in the customs sector, In a context where complex, organised and ever-emerging new forms of high social risk are appearing, there is a need to research the issues concerning the practical approaches of customs authorities for the further enhancement of their activities in collecting and preserving evidence. After all, evidence is the primary and foremost means of swiftly uncovering a crime. In this respect, the activities of customs authorities in this area are of paramount importance.

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