

Actual problems of criminal law, criminal procedure and criminalistics

Materials of scientific conference

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Actual problems of criminal law, criminal procedure and criminalistics

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The subject of the Truth in a Criminal Proceeding

Abstract. In this article, the truth is seen as credible by all means worthy of full and unquestioned trust in her. And this truth is able to be only the truth, not just confirmed, even the most perfect, the evidence, but certainly certified in compliance with all other principles and guarantees of due legal procedure. By its nature, the truth in criminal proceedings is an objective truth, ie, the content of the findings of the inspector and the court about the circumstances of the case, which does not depend on their desires and impulses, and must conform to the objective reality.

Keywords: objective truth, evidence, criminal procedure, knowledge.

If you ask me whether I am convinced of her innocence, I will not say: "Yes, I am." I do not want to lie. But I am not convinced of her guilt... I do not say about guilt or innocence, I say about uncertainty of the answer to the fatal question of a case.

F.N. Plevako

Issues of the truth establishment are worked out by the proof theory which constitutes a part of the criminal proceeding science and studies the process of proof during inquiry performance, preliminary investigation, and in the court. Many scientific studies were dedicated to issues of the proof theory. Crimes as socially dangerous acts reflect in the outside world leaving their marks both on tangible things and on people's consciousness. Using these marks, preliminary investigation bodies and the court investigates circumstances of a crime. Knowledge is realized in forms established by the law.

Reflections of a crime on tangible things and on people's consciousness used to

investigate circumstances of a crime in the process of criminal proceedings according to the procedure established by law become evidences. The process of knowing the essential facts and circumstances which occurs in forms established by the law takes form of proof. In the process of proof the authorized governmental bodies and officials, involving other parties to a legal process, collect, verify, and weigh evidences for proper investigation of circumstances surrounding a crime.

Establishment of real truth in a criminal case, i.e. substantiation of actual facts, establishment of their compliance with the reality, is carried out with use of evidence which is an instrument to discover the real

truth. Investigation and court can substantiate facts of the case, i.e. fact that a crime was committed, its commitment by a certain

right way: occurred crime, fact of its commitment by a certain person, guilt of that person, etc. As we see, the truth, veracity or falsity of knowledge, as well as of investigation and judicial conclusions, characterizes their content, correspondence or non-correspondence with facts of the reality as it is.

But to know and have a fairly confidently judgment in what extent investigation and judicial conclusions correspond with the reality, it is obviously necessary to have definite reasons for that according to the logic requirements. Evidence with the entire system of judicial guarantees for truth establishment, as is known, can be served as such reasons. This means that confidence in the truth or falsity of investigation and judicial conclusions is eventually determined by a degree of their validity.

Validity of conclusions determines trust in their veracity, if conclusions are not fully validated, though accurately as they reflect the reality, their veracity can be and must be judged with more or less probability and consequently with doubts in their veracity. As a result, probability or reasonableness of investigation or judicial conclusions must be understood not as their veracity and not as conformity of their content with facts of the objective reality, but as a degree of reasonableness of the statement that these conclusions really show the truth.

It follows from what has been said: widely popular belief that the goal of proof in the criminal proceeding is the objective truth is hardly correct. This goal must be not just the truth, but it must be the proved truth which is worthy of full and undoubted trust in it. This truth can be only the truth which is not just confirmed even with the most indubitable evidence, but which is definitely proved in compliance of all principles and other guaranties of the proper judicial and legal procedure.

The truth in a criminal proceeding by its nature is the objective truth, i.e. content of an

investigator and the court's conclusions about facts in a case, as noted above, does not depend on their desires and motives and must agree with the objective reality.

By nature the truth established in a criminal case is both absolute and relative. Relativity of the truth is determined by the fact that in a criminal proceeding a crime which is a small part of the objective world is studied not in all relations and mediacy with the reality, but within certain limits necessary to solve tasks of the criminal procedure.

At the same time, the relative truth is the objective truth which reflects physical facts in a right way and as such contains a part of the absolute truth. *Parts* of the absolute truth are referred to establishment of all facts with the presence of which the law associates certain legal consequences.

The legal literature has a point of view the followers of which believe that the objective truth in a criminal proceeding can be only absolute. In particular, I.I. Mukhin advancing this view wrote: "The objective truth in a criminal proceeding by its nature is the absolute truth and cannot be the relative truth" [Art. 37-38, 4].

Followers of other view are of the opinion that absolute and relative truths as such do not exist at all, that the truth is both absolute and relative, and that the absolute truth always manifests itself only as relative truths. For instance, A.I. Trusov wrote about this as follows: "Since the point at issue is about categories of the absolute and relative truth, formulation of the question in the form *either-or* must be excluded, because there are no truths which would be only absolute or only relative. In the context of ... the theory of knowledge, any objective truth is evident as relative truths from the sums of which it is formed" [Art. 113-116, 5].

We agree with authors who believe that the objective truth for achievement of which investigation bodies and court fosters their efforts, in view of proper knowledge of facts in their legal meanings, is the absolute truth and simultaneously serves as the relative truth given that the court insufficiently understands socially dangerous acts [Art. 72, 6].

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