

Material evidence according to the code of criminal procedure of Kosovo

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Abstract

In general terms, evidence can be defined as any material that is able to change the state of confidence of the investigators in relation to any actual proposal, to be judged and that is a subject for debate. (Murphy, 2005, 55). For legal purposes nature of the evidence can be better understood if we refer to the nature of the judicial process. A trial is an investigation into the events of the past that has as its main purpose to determine the acceptable level with a probability of those events of the past, which, in accordance with the law entitle the court to grant or deny innocence (Murphy, 2005, p. 55). From a scientific perspective, the evidence could be defined as any material that would assist the court in determining the probability of the events of the past that it should be investigated (Murphy, 2005, p. 56). In this sense main objective of this manuscript is the analysis of the material evidence according to the code of criminal procedure (hereinafter: CCP) of Kosovo.

Keywords: material evidence, Code of criminal procedure, Kosovo.

Introduction

A special type of evidence of great importance to the discovery of the truth is certainly material exhibits. Material evidence is considered any object which is important to elucidate the facts important in settling a criminal case. These exhibits are multiple in numbers and diverse.¹ They can be grouped in tools and equipment for the commission of the criminal offense (i.e. weapons, tools for forging etc.), produced items in the criminal offense (i.e. cash or counterfeit paperwork); goods acquired by a criminal offense which can be object of the criminal offense (objects or values received as a bribe), items in which are found traces of the criminal offense or traces of struggle between the perpetrator and the victim (Sahiti & Murati 2013, 289). Therefore, various items that are linked to the criminal offense and its perpetrator are indications which are able to gradually lead to the scene, to the perpetrator, from the suspect to the defendant, from the probability to the truth.

In each democratic country, the importance of the criminal and criminal-procedural law is clear from the very purpose of having such legislation. However, there is an entire field of investigation that is directly related to evidence, more than legislation in this field. The field is an attractive mixture of logic, epistemology, sociology, psychology and legal sciences, thus being is so broad as to include in itself a rich

¹ Article 187 of CCP of Republic of Albania, states that: "items that have been used as means in committing a criminal offence or on which there are marks/impressions or which have been the object of the defendant actions, proceeds of the criminal offence as well as any other item which may contribute to the clarification of the circumstances of the case". Therefore, according to Article 208, par. 1 of the CCC of Republic of Albania "A judge or prosecutor may order, by a reasoned decision, seizure of material evidence and items connected to the criminal offence, when they are necessary to prove the facts".

creativity. It is a field that has attracted a relatively small number of outstanding investigators, lawyers, and some of its main contributors have been philosophers and psychologists. Bentham looked at norms that regulate the evidence as nothing more than an artificial limitation of science that deals with evidence, invented by lawyers for dishonest purposes.

The basic characteristics of exhibits

Exhibits, although in relation to personal evidence are referred to as a mute witness, in certain circumstances they speak and testify better than many living witnesses or better than entire personal evidence.

Criminal Procedure Code of Kosovo pays special attention to the issue of evidence. General provisions for evidence are aimed at providing a good quality in understanding the facts and the evidence whereas the others focus on protecting the rights of persons whose statements comprise evidence, or protection of some values such as for example protection of confidentiality etc. The Criminal Procedure Code stipulates in a general way the procedural form in which must be presented a concrete proof for verification of facts in criminal proceedings, which in a way determines the extent of their use.

First, the Criminal Procedure Code of Kosovo regulates the procedures of taking evidence prior to indictment, which includes taking of evidence during the investigation (Articles 119- 123); interrogation of witnesses (Articles 124-135); interrogation of the expert (Articles 136-148) and the interrogation of the defendant (Articles 151-155). Secondly, it regulates the evidence in the main trial (Articles 257-263). Articles 257-263, specifically stipulate: general rules of evidence; evidence and the court order; evidence which are not acceptable; examination of evidence admissible in the trial; evidence for determining guilt to supporting the claim. Paragraph 1 of Article 257 stipulates that procedural bodies must meet the provisions of Chapter XVI. They are first dedicated to the court, but in cases where this code provides them, they apply to the state prosecutor and the police.

According to the Criminal Procedure Code of Kosovo, evidence is collected by procedural bodies (police, state prosecutor, court). When police initiates criminal charges, it presents of course the material evidence which it has obtained, then, it takes care and takes measures to preserve traces (exhibits), the items with which the crime was committed, which may serve as evidence, and gathers any information that could be used in criminal proceedings.²

Court makes a decision based on evidence which are reviewed and verified in the trial, so the evidence collected by the police or the state prosecutor takes probative value to support the verdict, only then, when examined and verified in the trial.³

Such evidence shall be reviewed in accordance with Article 261. Further on, paragraph 3 of Article 257 provides that the court shall not support its decision on inadmissible evidence. If despite this, the court in any way supports the decision on inadmissible evidence, and then this action represents violation of the procedural provisions

² Article 78, par. 2. of Code of Criminal Procedure of Kosovo.

³ Article 8, par. 2, and Article 361, par. 1. of Code of Criminal Procedure of Kosovo.

under Article 384, para.1, subparagraph. 1. 8. Article 257, in paragraph 4, is about prohibitions provided during interrogation or interview. In this case paragraph 4, subparagraph 1 prohibits that the freedom of defendant to formulate and express his/her opinion be influenced by: mistreatment, causing fatigue, physical interference, administration of drugs, torture, coercion or hypnosis.

Analysing further Article 257, we see that **subparagraphs** 4.2 to 4.4 prohibit that the defendant be threatened by measures prohibited by law; be promised any gain not provided by law; and weakened the memory of the defendant or his/her ability to understand. The prohibition from paragraph 4 of this Article shall apply irrespective of the consent of the person interviewed or interrogated.⁴ Paragraph 6 of Article 257, provides that, when interviewing or interrogation was conducted in violation of paragraph 4 of this Article, the minutes of the interview or examination of such questioning are inadmissible. Criminal Procedure Code of Kosovo, Article 262, reflects the evidence to determine guilt. This article in its provisions, clearly expresses the principle according to which, the court does not find the accused guilty by giving crucial importance to evidence or testimony which cannot be challenged by the defendant or defence counsel through questioning during any phase of the criminal proceedings.

Therefore, the court does not find the accused guilty based on giving importance only to crucial evidence listed below;

- a. Statement of the defendant given to the police or the state prosecutor;
- b. Testimony given by a witness whose identity is anonymous to the defence and the accused, and
- c. Testimony of the cooperative witness.

Article 262 deals with cases where the Code limits the action of the principle of free evaluation of evidence, in relation to making the sentencing judgment based solely on the statement or testimony of its paragraphs that were explained above. Criminal Procedure Code of Kosovo notes the items which may serve as evidence in criminal proceedings, the items and property that have facilitated the commission of the offense, items which have been obtained by the commission of the offense (Articles 112, paragraph 1, 154, paragraph 7, etc.). One issue to be emphasised is that the final determination of the procedure has not yet resolved all the issues that have to do with the problem of the legal permissible way of obtaining some procedural evidence and their use as evidence. In criminal procedure there are several means of evidence, the application of which is problematic regarding their permissible use. On the other hand, some forms of action, for certain reasons, are prohibited by the law.

Article 7 of the International Covenant on Civil and Political Rights requires that when taking the evidence which consists in a statement, the personality of the respondents (defendants) be respected (Sahiti, Murati, Elshani 2014, 678). Something similar is required by the Criminal Procedure Code of Kosovo which contains provisions through which it stipulates that when certain way of taking evidence makes it inadmissible, as a rule, it determines the legal consequences in case of their use on pronouncing the verdict. On the other hand, some actions that violate the integrity of the personality of the defendant or witness or which limit certain rights of citizens,

⁴ Article 257, par. 5, of Code of Criminal Procedure of Kosovo.

are incriminated as criminal offenses.

It is interesting to mention that the Criminal Procedure Code of the Republic of Kosovo does not specify the “notion” exhibit, in contrast to, for example, the Criminal Procedure Code of the Republic of Albania, which in Article 187 clearly defines what is understood by material evidence.⁵ More specifically, it states: “Material evidence are items that have been used as means in committing a criminal offence or on which there are marks/impressions or which have been the object of the defendant actions, proceeds of the criminal offence or any other kind of assets which are permissible to be confiscated according to Article 36 of the Criminal Code as well as any other item which may contribute to the clarification of the circumstances of the case”.⁶

Criminal Procedure Code of Kosovo also does not name closely the items that can be as evidence in criminal proceedings, nor does treat an item - evidence in a special way. Knowing that the process of proving, in the criminal procedure law, means taking a series of procedural actions, provisions of Chapter XVI, provide for the principle of searching and finding the truth in criminal proceedings. However, the Criminal Procedure Code of Kosovo, with its provisions has made a move forward in all stages of criminal proceedings, such as the role of the state prosecutor in the investigation; covert and technical measures of investigation and surveillance; the plea agreement; transformation of the trial in accordance with adversarial system experience; strengthening the role of the parties in the taking of evidence; cross-examination etc. (Sahiti, Murati, Elshani 2014, 668).

In the Code of Criminal Procedure, there are numerous rules that serve to finding the truth, thus the Code does not give up on the principle of the truth (Articles 248, paragraph 1, 326, paragraph 2). In addition will be mentioned some rules that serve to finding the truth, and which are considered the most important. The active role of the court in the case of evidence proceedings (Articles 329, paragraph 4, 334, paragraph 1, subparagraph 1.2, 346, paragraph 7); application of the theory of free evaluation of evidence by the judge; authorization of the criminal court to solve the prejudicial issues; the possibility of presenting new evidence - *beneficium novorum* etc.

Criminal Procedure Code of Kosovo, with the aim of protecting the individual rights of the defendant and other persons, also provides some deviations from the determination of the truth. It should be noted that these deviations do not diminish at all the importance of the truth. In this regard will be mentioned, the prohibition *reformatio in peius* (Article 395), then prohibition of the captious questions (Article 154, paragraph 4), proof of a fact only with certain evidence (Article 423 paragraph 3), the prohibition of questioning privileged witnesses (Articles 126-127), etc.

Conclusions

Scientific review of the institution of material evidence shows their overwhelming importance in the final resolution of a criminal case. Material evidence is crucial for the object of proof in a criminal trial. Material evidence contains in itself and reflects each time its link with a dangerous event which occurred, thus, their connectivity

⁵ Article 187 of Code of Criminal Procedure of Republic of Albania.

⁶ Ibid.

with the criminal offense. Material evidence is always associated with the offenders, their actions, how the event occurred, with traces and other circumstances, which relate to the particular event, thus entirely with the criminal case. Nowadays, when seeking and finding the truth in criminal proceedings, the emphasis is on material evidence, which is seen as the most efficient means of proof.

Naturally, the great role and importance of the material evidence is observed from the first moment of committing the criminal offense. Thus, when committing a criminal offense, the perpetrators will certainly leave their traces and evidence, which since the beginning of the investigation serve the prosecution, crime scene experts to identify and prosecute them. Material evidence can be found even in things that have served to commit the offense, on the perpetrator, the property robbed, the items that are acquired by criminal offense etc.

It has been found in practice that the results of the investigation of a criminal offense depend heavily on the care that experts show during the first investigative actions of discovering, taking, packing, fixing, and administering entirely material evidence.

Criminal procedure legislation of the Republic of Kosovo, in particular, the Code of Criminal Procedure, is characterized by its ranking in the democratic criminal procedural systems of adversarial nature, then, by the equality of the parties in the trial, but also with extended jurisdiction of the prosecuting authorities during the initial investigation, which is verified and checked by the court. Through this legislation, it is intended that criminal proceedings are fair and equitable, while ensuring the protection of the fundamental freedoms of the citizens, their legitimate interests, and strengthening of the legal system in general.

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