Journal of Civil & Legal Sciences
ISSN: 2169-0170

Review Article Open Access

Proof-Prejudice in Criminal Proceedings

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Abstract

The article provides a scientific and theoretical analysis of the nature of the binding nature of judicial documents in criminal proceedings, the concept of prejudice in criminal procedural law and the history of the development of this institution. The issues of determining the prejudicial significance of court decisions that have entered into force, the study of the limits of the application of prejudice in court proceedings, as well as the study of the subject and scope of evidence in court were also discussed. A comparative legal analysis of prejudicial issues in the criminal procedure law of the CIS countries, scientific proposals and recommendations on the implementation of the national legislation on the application of the institution of prejudice in criminal procedure law in the Republic of Uzbekistan and the development of the legal framework of this institution.

Keywords: Proof in jurisprudence; Criminal cases

Introduction

There are different means of proof in jurisprudence. These include evidence, prejudices, presumptions, and so on. When it comes to proving in criminal cases, evidence is often referred to as a means of proof. Other means of proof are of secondary importance. However, one of the most important tools for proof in forensic practice is prejudice, which plays a unique role in proving.

Prejudice is a complex and less well-studied legal phenomenon that does not have the same meaning in science. Prejudice as a legal concept originally appeared in Roman law. Roman jurists developed the "jud judata pro veritate accipitur (habetur)" rule, which has survived to the present day.

Today, the legislation of almost all countries is applied in practice, although not in the name of "prejudice". Prejudice is derived from the Latin word “praejudicium,” which means “to solve a problem in advance; pre-existing decision; circumstances that allow for discussion of the consequences”.

Prejudice includes two elements:

1) Praecedo - to move forward, to lead;

2) Praeiudico - preliminary discussion, in which "rrae means additional in advance” and "judicium" means a legal decision with the force of law.

As we have witnessed, different views on the concept of prejudice have been formed in the legal literature. In particular, A.G. Gorelikova and I.V. Chashchina understand prejudice as a rule that exempts from the recognition and proof of the facts established by a court verdict that has entered into force in other criminal proceedings. Indeed, prejudice is a case established by a court, prosecutor, and investigator, inquiry officer in the course of civil, economic or administrative proceedings by a court judgment or other decision that has entered into force, unless they are refuted by evidence collected, examined and evaluated in criminal proceedings.

In criminal proceedings, we can distinguish three types of prejudice depending on the subject making the procedural decision in criminal proceedings:

1) Prejudice applied by the inquiry officer, investigator;

2) Prejudice applied by the prosecutor;

3) Prejudice applied by the court [1].

So, based on the above, we can distinguish the following important features of prejudice:

1) Prejudice - is a method of legal technique, the rule of proof, which expresses the subject and direction, the content of the evidence used in law enforcement activities, and is used in the consideration of legal cases and decision-making on them. This rule is important in proving certain circumstances and in pre-resolving the case-based decision-making activity based on them. Its content is based on the rule that once a proven case is exempted from proof in subsequent proceedings. In other words, prejudice is also a rule of exemption from the obligation to prove a previously fact;

2) The validity of the facts proved in another legal case underlies the implementation of the prejudice. The logical nature of prejudice requires that the facts established by the law enforcer be constructed per the rules of conformity and legitimacy of the law, that is, to have a credible character. The reliability of the facts is the most important, basic condition of proof. If a court or other body has identified, examined and evaluated certain cases in the manner prescribed by law, and recorded them in the necessary procedural form, this category of facts is of prejudicial significance and does not require re-evaluation and verification;

3) Prejudice is mandatory for all law enforcement agencies.

According to Article 114 of the Constitution of the Republic of Uzbekistan, acts of the judiciary are binding on all state bodies, public associations, enterprises, institutions, organizations, officials and citizens. Non-execution or improper execution of acts of the judiciary shall entail liability in accordance with the legislation of the Republic of Uzbekistan. The Law of the Republic of Uzbekistan "On Courts" stipulates that judicial acts are binding on all state bodies, public associations, enterprises, institutions and organizations, officials, citizens and must be executed throughout the territory of the Republic of Uzbekistan. Resolution of the Plenum of the Supreme Court of the

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Received November 05, 2021; **Accepted** November 19, 2021; **Published** November 26, 2021

Citation: Sardorovich US (2021) Proof-Prejudice in Criminal Proceedings. J Civil Legal Sci 10: 296.

Republic of Uzbekistan and the Plenum of the Supreme Economic Court of December 20, 1996 №1-60 "On Judicial Power" strictly defines the scope of persons entitled to appeal against court decisions and the procedure for their consideration. Judgments, rulings and decisions of the court that have entered into force shall be binding on all state bodies, organizations, officials and citizens and shall be enforced throughout the territory of the Republic of Uzbekistan.

In fact, as a document of a public authority, court documents are:

1) Accepted by the competent public authority - the court;

2) Has a universal character;

3) The goals of the judiciary are realized in it;

4) Judicial documents as documents of law enforcement, as a rule, have an individual, material and procedural character;

5) In some cases, (i.e.) decisions made by the Plenum of the Supreme Court serve as an important legal instruction for lower courts.

The existence of prejudicial rules in criminal proceedings has the following advantages:

1. Eliminates contradictions in the activities of state bodies and officials responsible for criminal proceedings;

2. A criminal case shall be considered and resolved more competently by an authorized person;

3. Allows easy resolution of prejudicial situations that require a lot of money and effort in criminal proceedings;

4. Prevents the disappearance of previous court decisions that have legal force, resulting in an acceptable solution to the case.

Literature Review

The application of the prejudice rule requires

1) That the inquiry officer, investigator and the court always take into account the existence of a valid court decision relating to the case in question. The status of the prejudice does not allow for the conduct of the proceedings without regard to the prejudicial document;

2) Allows the court to determine the error and ultimately determine the truth in two interrelated cases;

3) Relieves the inquiry officer, investigator and the court of the need to re-determine the circumstances relevant to the case, which may be limited to referring to a court decision that has entered into force.

Prejudice in criminal proceedings means the circumstances specified in a legally binding judicial document (judgment, decision, ruling, etc.), provided that they meet the criteria of acceptability, reliability and formalization following the requirements of procedural law. The author's definition is understood to mean a legal rule that provides for recognition and application in the course of proceedings without additional investigation and evaluation, as well as exempts from re-proof of these cases.

In the words of T.G. Morshakova and S.V. Golubinskaya, "prejudice is a situation that has been determined by one court and cannot be re-determined by other courts, and must be assessed as complete, determined by them" [2].

O.V. Levchenko, on the other hand, considers prejudice to be "a legal rule that a court judgment (decision) that has entered into force is binding on one court (judge) and therefore excludes a full or partial retrial of the same case". In this case, the author is right in some respects [3].

S.V. Esaulov, on the other hand, is a rule that exempts the court from the obligation to prove the facts established by the court judgment that has entered into force, provided that these circumstances do not arouse suspicion in the body and officials conducting the criminal proceedings. Describes that it forces you to admit [4].

N.A. Tuzov, using the concept of general prejudice of court documents, recognizes it as a binding force on all bodies, organizations and individuals (entities) in the future application of judicial acts (primarily parts of their decisions) that have entered into force on certain cases in the cases specified in these documents [5].

In the investigation of some crimes, it is important to identify the victim, the attitude towards him before and at the time of the crime. This is especially true when a person who has committed a crime through the actions of the victim is in a state of intense emotional excitement and when the social danger of the victim goes beyond the limits of necessary defence. Similarly, the victim's self-harm through inappropriate behaviour.

Finally, as a case to be proved, it consists of the circumstances characterizing the identity of the accused, the defendant, as well as the personal data of the person who committed the crime, following Article 82 of the CPC. Here we can include aggravating and mitigating circumstances of the offender. For example, age, pregnancy, mood (strong emotional excitement), and so on.

According to Article 47 of the CPC, although there is information that a suspect has committed a crime, this information is not sufficient to persuade him to participate in the case as a defendant. The decision to recognize a person as a suspect shall be made by the inquiry officer, investigator or prosecutor. That is, a person is considered as a suspect by the decision of the inquiry officer, investigator and prosecutor to participate in the case as a suspect. According to Article 359 of the CPC, if a person is arrested on suspicion of committing a crime on the grounds provided for in Article 221 of the CPC, or if there is information in the case that gives rise to suspicion of a crime, he is involved in criminal proceedings. By Article 360 of the Criminal Procedure Code, a decision is made to involve a person in the criminal case as a suspect.

Articles 221 and 222 of the CPC provide for the involvement or non-involvement of a person as a suspect (i.e., detention until a criminal case is instituted). It can be concluded that the concept of "suspect in the commission of a crime" is broader than the concept of "suspect". Given the above, the word "suspects" in Part 1 of Article 224 of the CPC should be replaced by the word "detainee". In our opinion, the suspect is the subject of the inquiry and preliminary investigation phase. There are subjects such as a person who is being held before a criminal case is initiated or a person who is suspected of committing a crime.

For example, the Republic of Moldova adopted on March 14, 2003, according to Article 93 of this Code, the evidence is obtained legally, determines the existence or non-existence of the crime, the identity of the offender, the guilt or innocence of the accused and other circumstances to resolve the case.

If we look at the criminal procedure legislation of the state of Ukraine, according to Article 84 of the Criminal Procedure Code of Ukraine of April 12, 2012, evidence in criminal cases - all the factual information and items. That is, in this case, this evidence must be obtained by the inquiry body, investigator and court in the manner

prescribed by law. And this evidence determines the existence or non-existence of an act dangerous to society, the identity of the accused who committed the act, as well as other circumstances relevant to the case.

Following Article 104 of the Code of Criminal Procedure of the Republic of Armenia, adopted on September 1, 1998, evidence is any factual information established by the inquiry body, investigator, prosecutor and court in the prescribed manner. And this evidence must prove and determine whether there are acts provided for in the Criminal Code, whether the act was committed by the suspect or accused, as well as the issue of guilt and other circumstances for the content of the case.

The Code of Criminal Procedure of the Republic of Kazakhstan was adopted on December 13, 1997. According to the evidence, the difference from the Republic of Armenia is filled only by the words "legally obtained." That is, following Article 115 of the Criminal Procedure Code of the Republic of Kazakhstan, "evidence" means any factual information obtained and identified by the inquiry body, investigator, prosecutor and court in the manner prescribed by law.

The Code of Criminal Procedure of the Republic of Belarus was adopted on July 16, 1999, and the concept of evidence is enshrined in Article 105 of the Criminal Procedure Code.

According to him, each piece of evidence must be evaluated in terms of relevance, reliability, acceptability and sufficiency, that is, each piece of evidence must be sufficient to terminate the preliminary investigation individually and resolve the criminal case in court.

In contrast to some CIS countries, the Criminal Procedure Code of the Republic of Belarus specifically addresses the issue of prejudice and adopts an article on prejudice (Article 106 of the Criminal Procedure Code of the Republic of Belarus). Under this article, a judgment that has entered into force in another criminal case shall be deemed to have been established for the prosecuting authority in respect of a particular criminal case and shall be binding on its legal value.

The Code of Criminal Procedure of the Republic of Azerbaijan was adopted on July 14, 2000, and is based on the evidence in Article 124 of this Code. According to this, reliable information (messages, documents, objects) obtained by the participants of the trial or criminal proceedings is accepted as evidence. At the same time, this evidence must be obtained in strict compliance with the requirements of criminal procedure legislation and does not restrict the constitutional rights and freedoms of citizens.

The Code of Criminal Procedure of the Republic of Turkmenistan was adopted on April 18, 2009. According to Article 124 of this Code, information obtained in any lawful manner in a criminal case is evidence. Based on this information, the inquiry officer, investigator, prosecutor and judge shall determine whether the act provided for in the Criminal Code of the Republic of Turkmenistan has been committed, whether it was committed by the accused and the guilt or innocence of the accused, as well as other circumstances relevant to the case.

Article 113 (1) of the Criminal Procedure Code of Georgia provides for the notion of "circumstances established without evidence." These include, in addition to publicly available information, a copy of the previous conviction. There is also a single condition for accepting this judgment. That is, it can be accepted by the participants in the criminal proceedings, the parties or the body conducting the proceedings if there is no doubt about this factor if it does not find it necessary to investigate.

Only the CPCs of Russia, Turkmenistan and Georgia have articles on prejudice. At the same time, the issue of prejudice is more fully reflected in the Criminal Procedure Code of the Russian Federation. The reason is the recognition of cases established by a judgment or other court decision that has entered into force in civil, arbitration and administrative proceedings.

That is, a judgment or other court decision that has entered into force in a civil case indicates the exact prejudicial significance of the criminal prosecution and judicial authorities in which part of the criminal case. This simplifies the proof process and avoids various errors in the application of prejudice in criminal cases [6].

In conclusion, concerning the proposals and recommendations, we propose to supplement the CPC with Article 941 as follows: "Article 941. Prejudice.

"Circumstances established by criminal, civil, economic or administrative court proceedings and determined by court decisions that have entered into force shall be accepted by the court, prosecutor, investigator, inquiry officer without additional and repeated inspections, unless there is any doubt as to their validity and acceptability. In this case, such a sentence may not apply to the guilt of a person who has not previously participated in the criminal proceedings as a defendant".

Conclusion

We propose to supplement the Code of Criminal Procedure with Article 942 as follows: "Article 942. Limits of application of prejudice in criminal proceedings.

"If in the course of the assessment of the circumstances specified in Article 941 of this Code the court doubts their veracity, the court may verify or re-determine the veracity of these circumstances by the procedure established by this Code".

It is expedient to envisage the possibility of using the judgment or decision rendered by a court of a foreign state as a prejudice to the current criminal procedure legislation. In particular, for this purpose, we propose to supplement the CPC with Article 943 as follows: "Article 943. Prejudice of foreign state court documents.

"Circumstances determined by a court sentence or decision of a foreign state court that has entered into force shall be taken into account in the Republic of Uzbekistan by the inquiry officer, investigator, procurator and court in accordance with international agreements of the Republic of Uzbekistan".

Another important issue related to court documents that remain open in the current procedural legislation is the procedure for the annulment of illegal court documents. In particular, if the verdict is found to be illegal, a complaint or protest may be lodged against it in the prescribed manner, the question of how to revoke it and what procedures should be followed in this process has not been resolved in the current legislation. In this regard, it is expedient to introduce a separate third part in Article 478 of the CPC, in which the legal regulation of these issues.

References

1. Uralov S (2020). Required Perspectives for Investigation of Crimes in the Field of Information Technology and Overcoming Crime. Rev law sci EU: 1-4.
2. Morshchakova TG (1996). Delineation of competence between the Constitutional Court and other courts of the Russian Federation: Judicial constitutional control in Russia. Bulletin of the Constitutional Court of the Russian Federation Russia EU 6:20-21.
3. Levchenko OV (1994) Well-known, prejudicially established and presumed facts and the peculiarity of their use in proving. Cand leg sci US: 25-26.

4. Esaulov SV (2013) Implementation of the principle of the presumption of innocence in proving at the pre-trial stages of criminal proceedings: Author's abstract. Cand jur sci US: 10-11.

5. Tuzov NA (2006) Motivation and prejudice of judicial acts: Monograph. RAP AUS: 45-46.

6. Uralov S (2020) “Some Issues of Qualification of the Rape Crime”. TSUL Legal Report Int Electron Sci J 1:1-12.