

Verification of Disputed Facts in Criminal Proceedings with the Assistance of Experts

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Abstract

The process of proving in criminal proceedings, which always results in a court decision, occupies a central place in that procedure. The truth refers to the complete verification of all relevant legal facts on which the application of substantive criminal law depends by matching the verified factual situation with the actual event that has been deemed a criminal offense. In criminal proceedings, it is often almost impossible to verify important facts without the aid of technical means; hence, the criminal procedure is closely linked to criminalistics, forensic medicine, forensic psychology, forensic psychiatry, and other related fields. For example, today one can think of investigating criminal offences without the application of forensic techniques or the opinion of a forensic psychiatry expert, who is presented in cases where there is a need to verify the mental state of the perpetrator of the criminal offence, etc. All evidence that establishes the facts must be examined and verified at the trial. The court must verify the facts through questioning in court, through questioning the defendant, expert witnesses, etc. Thus, all evidence, including relevant evidence that serves as a basis for the judgment, must be presented orally at the trial.

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1. Introduction

In the theory of criminal procedure law, there is a consensus that the process of proving is the most important part of the criminal process. According to the opinion of most criminal procedure theorists, a fact is the objectively real existence of an object, phenomenon, process, event, quality, or relationship proven in a mentally perceptual manner.

The search for and ascertainment of the truth in criminal proceedings should be the motto of all actions undertaken by the proceeding bodies. In order to ascertain the truth in criminal proceedings, the court, by analysing and evaluating the evidence, must accurately ascertain the facts that are relevant for the clarification and resolution of the criminal case.²

The court bases its judicial decision solely on the facts and evidence presented in the judicial review. Proving facts in criminal proceedings, compared to other proceedings, is much more difficult, since in criminal proceedings the guilty defendant has an interest in making the examination of facts difficult, distorting the truth, and misleading the court.

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Evidence that speaks of the accuracy of any relevant legal fact in criminal proceedings is obtained with the help of means of proof, which are permitted by legal norms or, at least, always derived with support from the principles of criminal procedure.

Therefore, in criminal proceedings, in order to find the truth, depending on the situation of the specific case, it is possible to use as evidence any source of knowledge that contributes to shedding light on the crime and its perpetrator.

2. Facts in criminal proceedings

The notion of 'fact' has the meaning of an event, occurrence, or fragment of objective reality. It is an event, occurrence, or concrete thing connected by multiple relationships with other facts.³ The facts that must be proven in criminal proceedings represent the essence of the criminal case. As such, they are the object of proof in criminal proceedings. The court and other procedural subjects have the duty to engage in their verification.

Facts are proven by various evidence.⁴ The facts that must be proven in the procedure, in the theory of criminal procedure according to the rule, are called "relevant legal facts"; however, since both in theory and in legislation the term "fact" is often accompanied by various attributes such as, e.g., "decisive fact", "important fact", "indicative fact", "supplementary fact", "controlling fact", etc.

Discovering the truth and making a fair decision requires ascertaining all the facts relevant to the case. Therefore, it is necessary to determine the circle of facts that need to be proven in each case. For a fact to be valid, it must have a connection with the case, and the information about this fact must have come from a legitimate source and must have been obtained according to the procedural rules provided for each piece of evidence.⁵

According to Article 149 of the Criminal Procedure Code of the Republic of Albania, the information on the facts and circumstances related to the criminal offence, which are obtained from sources provided for by the criminal procedural law, as well as in compliance with the rules defined by it, shall be considered as evidence and serve to prove whether the criminal offence was committed or not, its ensuing consequences, the guilt or innocence of the defendant, and the level of his/her accountability.

In the process of clarifying and establishing relevant non-legal facts in a specific criminal case, the proceeding body often requires knowledge from natural or technical sciences, which the proceeding body, as a lawyer, does not possess.⁶ Therefore, for their verification, by decision of the proceeding body, persons may be

³ Ejup Sahiti, Ismail Zejneli, *E drejtat e procedurës penale e Republikës së Maqedonisë*, Skopje, 2017, p. 161

⁴ Ibid, p. 162. Relevant legal facts are all existing or past facts that are included in the conditions set by substantive criminal law for imposing a criminal sanction, the facts that are found in the conditions under which the law of criminal procedure binds the court to conduct criminal proceedings, as well as the facts that are found in the conditions on which the manner of conducting procedural actions depends. The court, by establishing the relevant facts in criminal proceedings, establishes the factual situation on which it bases the judicial decision. Therefore, the factual situation in criminal proceedings is the totality of relevant legal facts.

⁵ Ibid, p. 162.

⁶ Ibid, p. 203.

engaged in the procedure who, based on their professional qualifications and skills acquired in a specific field, as well as technical training and other relevant circumstances, can provide an objective and professional finding and opinion. Such persons assist the court in verifying the disputed facts and are called experts.

3. Disputed facts

During the development of criminal proceedings, the need often arises to verify the facts related to the event, to establish whether a fact occurred and how it occurred.⁷

In criminal proceedings, we encounter various pieces of evidence that prove relevant facts.⁸ The court gains knowledge of the disputed facts through the process of proving, either through personal perception or through the declaration of natural persons, from the content that those persons, state bodies or other legal entities have expressed in writing, etc.⁹ In a criminal case, for a given item to be accepted as evidence, it is a prerequisite that it be proposed, accepted and then that it be evaluated and verified. Before deciding on a case, the court must create a complete conviction of the accuracy of the fact being proven, and its conviction must be based on that evidence (data), which by its nature corresponds to the thinking process in general.¹⁰ The probative value of material evidence that, by itself or through the traces it carries, provides information about the disputed facts of the criminal case is assessed based on the general rules on the value of evidence.

“The issue of truth, like that of lies, is very old. For millennia, a struggle has been waged between truth and lies, between good and evil, and human efforts to unmask lies have been present throughout human history.¹¹ The problem of truth, in general, manifests itself as a rather complicated problem, and all the issues that belong to this problematic are related to the problem of the origin of truth, to the way of knowing it, to the problem of the possibility of knowing the truth, and to the problem of truth itself, in other words, to the problem of what truth is, what it consists of, etc. The means for knowing the truth about any fact are the mind (reason, intellect) and experience. Depending on whether the truth about any fact is achieved through meditation or relying on experience, we are talking about absolute truth and relative truth.”¹²

4. Expertise

Expertise is important evidence that aims to ascertain, clarify, or prove facts that are important to the criminal case through the opinion given by specialists in various relevant fields.¹³

Expertise has a wide application in criminal proceedings, because there are

⁷ Halim Islami, *Procedura penale: komentar*, Botimet Morava, Tiranë, 2003, p. 228.

⁸ Ejup Sahiti, Ismail Zejneli, *op. cit.*, p. 162.

⁹ Ibid, p. 162.

¹⁰ Ibid, p. 162.

¹¹ Ejup Sahiti, *Argumentimi në procedurën penale*, Prishtinë, 2006, p. 9.

¹² Ibid, p. 9.

¹³ Halim Islami, *op. cit.*, p. 230.

numerous cases when it is necessary to conduct research that requires special knowledge.¹⁴ The need for expertise is determined by the circumstances of the specific criminal case.

Expertise is expressed through the expert's findings and opinion.¹⁵ The expert examination is ordered and conducted by the public prosecutor or the court; therefore, the expert's findings and opinion are considered evidence in criminal proceedings and, as such, are subject to the court's assessment. The judge is free and independent in assessing the expert's opinion, and the expert's opinion is not binding on the court (except when it is consistent with other evidence), and the judge is free in assessing its accuracy.¹⁶

There are many types of expertise, such as document authenticity, forensic medical expertise, psychiatric expertise, criminalistics expertise, financial expertise, computer analysis, toxicological expertise, etc.

For example, in the authenticity of a document, the tactical approach to the expertise process depends on what needs to be proven; for example, if it is a controversial document that is suspected of being forged, then a graphological expertise is performed on it.¹⁷

In theory, documentation expertise is also encountered with the notion of documentation examination or graphoscopy and is usually defined for the following reasons:¹⁸

- When there are doubts about the authenticity of the signature or handwriting
- When there is a suspicion that a certain change has been made to the document or the document has been made from parts of two or more documents (photocopy-photomontage),
- When there is a doubt about the age of the document,
- When it is necessary to reconstruct a partially destroyed document (torn, burnt, or a document with cut-out parts of the text),
- When it is necessary to identify a photocopier with which a specific document was copied,
- When it is necessary to identify a machine or computer printer on which a specific document was printed, and
- When it is necessary to determine the authenticity of a microfilmed document.¹⁹

Then, forensic experiments on persons are among the most frequent experiments encountered in the expert's daily practice, experiments that are performed only at the request of the investigative body and the court.²⁰ However, experimentation must be carried out even without a decision to conduct experimentation by the above-mentioned bodies in cases where a delay in the examination could lead to the disappearance of the characteristics of the damage.²¹

¹⁴ Ibid, p. 230.

¹⁵ Ejup Sahiti, Ismail Zejneli, *op. cit.*, p. 209.

¹⁶ Ibid, p. 209.

¹⁷ Muazam Halili, *Metodika kriminalistike*, Tetove, 2025, p. 114.

¹⁸ Ibid, p. 114.

¹⁹ Ibid, p. 116.

²⁰ Ibid, p. 253.

²¹ Agim Ramadani, Sabri Hoxha, *Mjekësia ligjore*, Universiteti shtetëror i Tetovës, 2015, p. 20.

The forensic examination of persons can be carried out in various places, such as in the forensic medicine cabinet or the forensic medical service ambulance, in the investigator's room, in the courtroom, in the medical institution (where he is hospitalised), in the detention room, or in the apartment of the person undergoing the examination (when he is unable to move due to an illness, etc.).²²

Meanwhile, regarding ballistics expertise, the main task is to identify the firearm based on the traces left on the fired cartridges and shells found at the scene where the criminal offence was committed, determining the technical condition of the weapon, the distance of the shooting, the place of shooting, etc.²³ In the investigation of a crime committed with a firearm, the discovery of the weapon- whether it was left at the scene or hidden elsewhere- is of particular importance. Fingerprints, blood, gunpowder residue, and other trace evidence may be found on the recovered weapon.

When discussing the verification of facts in criminal proceedings, it is also important to note that certain facts are presumed and, according to legal rules, do not need to be proven during the proceedings since they are assumed to exist. Proof of such facts becomes relevant only if there is doubt about the accuracy of the presumption in a specific case.²⁴ In this regard, the presumption of the defendant's responsibility has been mentioned as a very important presumption.

According to Article 17 of the Criminal Code of the Republic of Albania no one shall be held criminally liable who at the time of committing the offence suffered from psychic or neuropsychiatric disorders ruining his mental balance entirely and, consequently, was unable either to control his actions or omissions, or to be aware of committing a criminal offence. A person, at the time of committing the criminal offence, suffering from psychic or neuropsychiatric disorders, having lowered his mental capacity to be aware and fully control his actions or omissions, shall be liable, however, this circumstance shall be considered by the court in determining the extent and the kind of punishment.

A person shall not be excluded from criminal liability if he commits the offence while drunk.

Where inebriation was caused due to accidental circumstances and it has lowered the mental capacity, this circumstance shall be taken into account for mitigating the sentence. Where inebriation was caused with intent to commit a criminal offence, this circumstance shall be taken into account for aggravating the sentence. The above-mentioned rules are also applied when the criminal offence is committed under the effect of narcotics or other substances. (Article 18 of the Criminal Code of the Republic of Albania).

4.1. Purpose of the expertise

Expertise consists of conducting research, obtaining data or making assessments that require specific technical, scientific or cultural knowledge.²⁵ Expertise as an investigative action is initiated by the representative of the procedural body

²² Ibid, p. 20.

²³ Halim Islami, *op. cit.*, p. 234.

²⁴ Ejup Sahiti, *E drejta e procedurës penale*, Prishtinë, 1986, p. 153.

²⁵ Vesel Latifi, *Kriminalistika*, Prishtinë, 2014, p. 247.

through a decision that he makes to conduct specific expertise.

The assessment of the expert's opinion as evidence is made based on the general rules of evidence. It has no more value than other evidence. The opinion and results of the expertise must always be viewed and assessed in the light of other evidence and circumstances.²⁶

An expert examination shall be allowed where it is necessary to carry out researches or acquire information or evaluations which require special technical, scientific or cultural knowledge. (Article 178 of the Criminal Procedure Code of the Republic of Albania)

5. The expert

An expert is a professional person who is called upon in criminal proceedings to provide an assessment and opinion on specific disputed facts.²⁷ By exercising the expertise, the expert, based on his professional qualifications and knowledge, examines the disputed facts and gives his opinion on them, thereby performing the procedural act of expertise.

The appointment of the expert is made by choosing him from among the persons registered in the books designated for this purpose or from among those who have special knowledge in the relevant branch. When the expertise is declared invalid or a new expertise must be conducted, the proceeding body takes measures, where possible, to entrust the new task to another expert.²⁸ The decision of the proceeding body to appoint an expert shall be notified to the defendant or his defence counsel, informing him that he has the right to request the exclusion of the expert, to propose other experts, to participate in the expert examination himself, when possible, and to ask questions of the expert. When the research and assessments appear to be very complex or require different knowledge in several branches, the proceeding body shall assign the performance of the expert examination to several experts. In special cases, when the examination cannot be carried out from the list of experts registered with the court, the proceeding body, after obtaining the opinion of the parties in advance, shall appoint other experts, domestic or foreign, outside this list.²⁹ The expert is obliged to perform his duty, except in cases where one of the reasons exists that excludes him from being an expert or when he claims that he is not competent or is unable to perform the expertise and his request is accepted by the proceeding body.

In the Article 137 of the Criminal Procedure Code of the Republic of Kosovo the state prosecutor shall order that a post mortem examination and autopsy be performed when there is a suspicion or it appears that the death was caused by a criminal offense or it is connected with the commission of a criminal offense. An autopsy may not be entrusted to the physician who treated the deceased. If the body has been buried, an exhumation shall be ordered by the court to view the body and perform an autopsy. The Ministry of Justice shall issue guidelines and standards for post

²⁶ Ibid, p. 247.

²⁷ Ejup Sahiti, Ismail Zejneli, *op. cit.*, p. 203.

²⁸ Article 179 of the Criminal Procedure Code.

²⁹ Ibid.

mortem examinations.³⁰ Toxicological laboratory analysis of samples taken from a victim may be ordered by the state prosecutor. If a defendant refuses to provide written consent for the collection of blood, body tissue, DNA, or other similar material, or to undergo a physical examination of injuries as required for the investigation, the state prosecutor shall request an order from the pre-trial judge authorizing the necessary sample collection or examination.

5.1. Expert actions

Before beginning the expertise, the expert is instructed to carefully examine the subject of the expertise and to accurately present everything he observes and ascertains objectively in accordance with the rules of science and professionalism.³¹ An expert summoned in a criminal case may propose that evidence be taken or that important items and data be collected to provide a finding and opinion.

In order to respond to the expert's requests, the expert may be authorised by the proceeding body to see the acts, documents and everything included in the prosecutor's or court's file.³² The expert may also be authorised to participate in the questioning of the parties and the taking of evidence, and when the expert requests information from the defendant, victim, or other persons, such information shall be used solely for the expert examination³³.

6. Conclusion

Finding the truth in a criminal case is undoubtedly one of the most important objectives. However, in criminal proceedings, various facts are often presented that require careful examination and judicial decisions are made based on them. Therefore, the decision rendered by a competent court in a criminal case must be grounded in relevant evidence.

No matter how professionally prepared a judge may be, it is often necessary to engage professionals with expertise in various scientific fields to provide their opinions and findings on specific facts requiring specialized evaluation. Such professionals, who are appointed by the judicial authority to offer expert opinions and findings on issues from disciplines such as medicine, criminology, or finance, are known as experts.

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³⁰ Article 137 of the Criminal Procedure Code.

³¹ Azem Hajdari, *Komentar, Procedura penale*, Prishtinë, 2010, p. 457.

³² Article 184 of the Criminal Procedure Code,

³³ Tony Ward and Ann Plenderleith Ferguson. "Proof of Foreign Law: A Reduced Role for Expert Evidence?" *Journal of Private International Law* 20 (1), 2024: 95–116. Doi: 10.1080/17441048.2024.2347720.

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