

**Faculty of Law**  
**OF THE NATIONAL AVIATION UNIVERSITY**

**Edited by**  
**Irina Sopilko, D.J.S., Professor**

# **JURISPRUDENCE**

## **IN THE MODERN INFORMATION SPACE**

**Collective monograph**

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**2019**

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The collective monograph of the author's group of the Faculty of Law of the National Aviation University is dedicated to the relevant problems of jurisprudence in the modern information space. The main globalization tendencies of the development of the law, in particular the fundamental values of the law, their interpretation and interaction of legal systems, the role of fundamental principles of law, state sovereignty and human rights, modern tendencies in ensuring legal security and economic freedoms in the light of the interaction of national legal systems are considered.

The collective monograph consists of 22 chapters, which are both the general theoretical and practical block of monographic work, and the scientists conducted a comprehensive analysis of the issues of the legal system of the social state, isolates and analyzes the essential characteristics of such a legal system and identifies the ways of developing the legal system in the context of globalization changes in the world. Also, the monograph reflects the results of scientific research of political and legal tendencies of interaction of national and international principles of statehood development, which later became the basis for considering the peculiarities of reforming state-legal institutions as a necessary condition for the development of a social and legal state in Ukraine.

Scientific publication contains articles covering issues from different branches of law.

The publication is intended for lecturers of law faculties of higher educational institutions and persons who are interested in development of legal science in Ukraine.

Contents of scientific papers do not always coincide with the views of the editorial board.

***Recommended for publication by Academic council of Open University of Liberal Sciences (USA)***

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Some chapters of the monograph devoted to the coverage of leading private law institutes. The authors carried out a comprehensive analysis of national and foreign legal systems, defined the methodology of private law, and studied the trends of the development of copyright protection.

At the same time, one should focus on the chapters where issues of public administration are considered in the key areas of our country - administrative and environmental. Public administration covers almost all spheres of public life. However, its universality does not mean total interference and overregulation of social relations, especially during the period of the information revolution. Therefore, an innovative approach in generalizing the current legislation provided a series of proposals offered by the authors of the relevant articles.

The monograph explains the nature and types of global legal issues that are the subject of studying law. It is emphasized that, on the one hand, global legal problems destructively affect national law; on the other hand, they have the ability to stimulate the implementation of the highest social, economic, labor, political international standards in the domestic law. As a result, modernist ties and certain integral legal relationships change the international, intergovernmental, social and individual ties between the subjects of law; therefore, the scientific analysis of the mutual influence of national and international law in the measurement of globalization changes is very important.

The proposed collective monograph is a continuation of a number of scientific publications of the author's collective. We hope that this work will be useful to anyone interested in problems of state and law making in the global dimension of our time.

***Irina Sopilko***

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## Chapter 17

### **Evidence admissibility in criminal proceedings and criminal liability for violations of the evidence obtainment procedure**

One of the main criminal proceedings issues appears to be the institution of evidence, its sources and the procedure of dealing with them. It is quite incompletely, contradictory and imperfectly presented in Art. 84, Art. 93 and others of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) [9]. At the same time, the application of the criminal liability for violations during the evidence obtainment procedure will assist in solving the fundamental problems of evidence admissibility into the stated procedure.

Part I of Art. 84 of the CPC of Ukraine outlines the evidence concept quite superficially and doesn't reflect the fundamental and additional legal evidence properties. Some evidence properties are explicated in the context of other proof problems according to Arts. 85-90 and others of the CPC of Ukraine. These Articles deliberately point out false grounds for the recognition of certain information as evidence. For instance, some testimony and expert opinions are not correctly nominated by the procedural evidence sources in Part 2, Art. 84 of the CPC of Ukraine, as the testimony, in fact, presents the peculiar way of evidence transfer from personal sources to an investigator, a court or other criminal proceedings subjects. Expert opinions are one of the evidences supply forms in criminal proceedings, obtained through the material and personal sources studies by an expert or some other relations or phenomena. Also, the expert opinions may be obtained by means of documents study using whatever special knowledge except the legal one. The mentioned knowledge therefore becomes more professional than special for an investigator, a judge, as well as for other subjects, conducting the proceedings.

These and other drawbacks concerning the evidence properties and nature, such criminal procedure law scientists as S.A. Kyrychenko [4, pp. 169-170] and many others [2, pp. 20-22; 10, pp. 134-140; 15, pp. 169-173, etc.] tried to correct. They offered the innovative evidence essence comprehension, their fundamental (significance, legality, admissibility, high quality, authenticity) and additional (consistency, sufficiency) legal properties as well as the proof problems closely connected with these.

In addition to these national researches, the national and foreign practice gave the great number of acquittal sentences, passed by courts considering only strictly formal reasons, to the world. For example, in 1961 Ohio police searched Mapp house, where the criminal was present, according to the police. They didn't

inform the above-mentioned female citizen about the search and found the pornographic photos collection among her things, violating the state legislation. Based on those facts, Mapp was initially convicted, but later acquitted by the United States Supreme Court after filing an appeal. The United States Supreme Court ruled that the evidence had been illegally obtained by the police and couldn't be used as her guilt proofs infringing the legislation concerning the pornographic photos collection storage [18].

A new CPC of Ukraine was adopted in 2012. It has greatly intensified the focus of the domestic judicial practice concerning the use of the foreign courts practice; mainly it concerns the European Court of Human Rights (hereinafter referred to as the ECtHR). The same demands are outlined in Part 2, Art. 8 of the CPC of Ukraine, due to which the rule of law in criminal proceedings is applied considering the ECtHR practice. The similar situations concerning the acquittal verdicts rendering appeared and became widespread. Many of these cases and their legality arguments are also outlined in A.V. Panova's candidate thesis. In particular, the author additionally substantiates the legitimacy of the evidence recognition practice as inadmissible because the evidence has been obtained before adding the information about the committed criminal offences into the Uniform Register of Pre-trial Investigations. Also, this scholar considers the necessity to recognize the evidence as inadmissible, obtained after the pre-trial investigations expiry term due to Part 8, Art. 223 of the CPC of Ukraine norms [13, p. 104]. This, in fact, is deemed to be illegal and contravenes the norms contained in Part 2, Art. 3 of the Constitution of Ukraine. The mentioned Supreme Law norm obliges the state and its bodies to confirm and guarantee the rights and freedoms of all the citizens. In this case, both the defendant and the complainant interests are taken into account, the legal status of the latter being infringed by the above-mentioned acquittal verdicts, rendered on the basis of purely formal procedure law violations. The court, thus, doesn't undermine the authenticity of the information obtained in such a way. Those reasons justify the necessity to improve the existing innovative vision of the nature and evidence properties, the admissibility of such information as an evidence for the proof, the criminal liability application for the evidence obtained.

Y.I. Lantsedova suggested a brandnew solution to define the evidence concept and properties. She has scrupulously analyzed the existing 27 evidence assessment assignments and 17 similar evidence verification assignments and concluded that an integrated evidence assessment may only have the right to define such basic legal properties as each and every evidence significance, legality, admissibility, high quality, and such additional legal properties as sufficiency and consistency [10, p. 172].

Having used the above stated results, S.A. Kyrychenko offered a new version of the first two Article Parts of the CPC of Ukraine on evidence [4, pp. 169-170], and

O.S. Tuntula developed this approach on the comprehensive adjustment of all the actions, evidence and sources [15, pp. 169-173]. It was further improved as it appeared obvious and necessary to differentiate one more fundamental evidence legal property named authenticity [2, p. 41-45, etc.]. Later, our national scholars proved the viability of only three fundamental evidence legal properties – significance, high quality and authenticity, while the admissibility might be considered only as the result of evidence assessment. If a person violates the legality demands in obtaining evidence, the criminal liability is presupposed to punish the wrongdoer. But the stated circumstances shall not lead to inadmissibility of such an information and its ability to be used as evidence, provided that the information is significant, of high quality and authentic [11, pp. 33-34, etc.]. Currently, this point of view also reserves some further developments, particularly regarding certain norms and criminal liability application procedure for the violations during the information obtaining procedure.

However, the above presented results of the court practice show that this approach can not solve the problem at the moment. In a point of fact, such fundamental legal property as legality, i.e. the information obtaining, stipulated by the CPC of Ukraine, so to say, without the use of fraud, threats or violence, or omitting any other substantial infringements of the subject's legal status, makes it impossible to recognize these facts as evidence and to admit them as such into the proof process.

As a result, we have already outlined a brandnew point of view about the indispensability to define only three fundamental evidence legal properties such as significance, high quality and authenticity. Also, we have already introduced a slightly different understanding of the last two properties.

The examples of the judicial practice regarding the recognition of evidence as inadmissible only due to some formal grounds and therefore the acquittal verdicts rendered based on those formal grounds, give the opportunity to assert the illegality of such verdicts covering all the situations where the formal violations of the pre-trial investigation procedure took place. Definitely, just the formal infringements themselves don't give reasonable grounds to doubt the authenticity of the evidence obtained. In such cases the investigator and the prosecutor shall be held liable for the above mentioned infringements, however, these infringements can not be considered the ones permitting the recognition of the obtained information inadmissible as evidence with regard to the indicated cases, especially taking into account their overall value of evidence in comparison to all the other evidence with regard to the case.

For the last few years the jurisprudence expresses an opinion that only three fundamental evidence legal properties prove their right to exist instead of the above mentioned five fundamental evidence legal properties [2, pp. 20-22; 11, p. 28, etc.] – significance, high quality and authenticity. The information is considered to



be of high quality if it doesn't contain meaningful contradictions and makes it possible to conclude univocally, also, if the information is obtained either without substantial infringements of widely recognized expert methodology or without the recognized in the due manner expert methodology. We argue the admissibility as the fundamental evidence property. It matters only when assessing the evidence as a whole. And it looks quite reasonable and persuasive when transforming the admissibility from one of the fundamental legal properties of each and every evidence into decisions having to be made relying onto the overall value of certain information. More importantly, this information has to be verified regarding the existence of all those fundamental legal properties in it, without which the information can not be deemed as evidence and therefore can not be included into the proof process as evidence.

In this regard it should be specified that, firstly, the admissibility, in fact, depends on the assessment, including the examination of each and every piece of information in order to find this inherent unity of all the fundamental legal properties in it. We would strongly recommend bearing in mind that currently only significance, authenticity and high quality are considered [3, pp. 31-32; 11, pp. 33-34].

Secondly, we have suggested herein the detailed instructions how to employ evidence in the proof process together with some other pieces of information. The following issues should not be proved in the criminal proceedings: a) the provisions of a specific legal act; b) a well-known or prejudicial fact, which, however, may be used directly in the decision making process along with evidence; c) a paranormal phenomenon, that is the one that contradicts the well-established laws of nature or just can not be explicated. These points are deemed to be underpinned in the following manner: the provisions of a specific legal act may also be used in the proof process along with evidence, providing they comply with the competition or collision standards, also, generally known facts and/or prejudicial facts and/or presumptions, if the main subject of the criminal proceedings doesn't doubt the significance and/or authenticity of such facts. The notion *main subject* presupposes the person liable for the direct, objective, comprehensive and complete clarification of all the criminal offence circumstances (e.g. an investigator, a head of the investigative department, an investigating magistrate, a judge, etc.).

Cardinal developmental changes are still to come into the sphere of evidence, the nature of legality and evidence admissibility as fundamental legal properties presenting such information. Also, Art. 86, Art. 87, Art. 90 of the CPC of Ukraine must be reconsidered concerning the issues of evidence inadmissibility recognition. The aforementioned articles of the CPC of Ukraine indisputably recognize the information obtained violating the procedure set by the CPC of Ukraine, or significantly infringing the legal status of the criminal proceedings subjects, inadmissible for the proof process as evidence. Currently, one has to

admit that the tendency of recognizing the information inadmissible if it was obtained in the above stated manner, shall be applied only if the information obtaining, occurred either without complying with the procedure set by the CPC of Ukraine or omitting it, also, substantially violating the legal status of criminal proceedings subjects, disturbs the subject of the stated proceedings. In other words, the person handling the proceedings doesn't have the opportunity to make sure that this information is authentic enough. At the same time, persons guilty of non-compliance with the evidence obtaining procedure or of obtaining it in a manner that significantly infringes the legal status of the criminal proceedings subjects, shall bear such a legal liability that will guarantee the minimal level of such instances.

The type of liability, whether it would be criminal or any other legal liability, totally depends on the factual circumstances of the evidence obtaining. The attention therefore is paid to the character of the infringements when obtaining the evidence: were they infringing the procedure set by the CPC of Ukraine or the rights and fundamental freedoms of the criminal proceedings actors? And were those infringements really significant or mainly formal? First of all, special attention shall be drawn towards the existence of some peculiar norms in the sphere of the criminal authority abuse, malpractice or power abuse regarding the crime commitments against justice. These norms include:

- coercion to testify while being questioned by the prosecutor, investigator, or the Operational Search Department public officer. These coercion measures are of an illegal character, that's why the aforementioned persons are held liable due to Part 1, Art. 373 of the Criminal Code of Ukraine [8];

- if these illegal actions took place along with the use of force and violence, but without the torture traits, then the aforementioned persons would be held liable due to Part 2 of the same Article.

It's worth emphasizing here that the head of the pre-trial investigation body is considered to be the subject of this crime, if he examines the witnesses by himself, and therefore performs the functions of an investigator.

Any other person can commit the above described crimes having agreed previously with the aforementioned persons or because of their tolerance. The criminal liability in this case is calculated according to the level of the accompliceship with the subjects of a crime (Art. 373 of the Criminal Code of Ukraine).

At the same time, due to quite narrow and very imperfect disposition version of the current Article, such criminal actions can not take place while obtaining information from a personal source when conducting the investigative experiment, presentation of a person or things, or a person's corpse for identification. Such criminal actions even can not take place while conducting

searches and the whole range of many other investigative (search) actions, directly or indirectly related to obtaining the evidence from this or that personal source.

Taking into account these reasons, coercion to testify not only during the examination (simultaneous examination of two or more persons, cross-examination), but during any other investigative actions violating the procedural law norms, has to be qualified, if supported sufficiently, pursuant to Art. 365 of the Criminal Code of Ukraine. Such socially dangerous actions should be regarded as premeditated wrongful acts committed by a police officer. These wrongful acts are considered to exceed the rights and powers granted to the police officer if they have definitely injured the rights guaranteed by the law, the citizens' interests, state or public interests, legal person's interests.

If coercion to testify possesses the torture traits, then the actions of a guilty person should be qualified due to the total number of crimes set by Art. 365 and Art. 127 of the Criminal Code of Ukraine. Art. 127 of the Criminal Code of Ukraine includes the norm prescribing the liability for the torture, the grounds permitting it. The torture in this regard means the intentional use of utmost violence, that causes severe pain and suffering, both physical and mental, battery, torments or other violent actions in order to force the injured person or another one to perform acts contradicting their will. Also, the torture aims at getting some information or confession, and at punishing the injured person or another one for the actions performed by this person or another one, or for the actions this person or another one is suspected of performing. Also, the torture targets at frightening or discriminating the injured person or another one.

The norm on the torture prohibition is of international character and is provided for by Art. 3 *Prohibition of Torture* of the Convention for the Protection of Human Rights and Fundamental Freedoms. Pursuant to it no one shall be subjected to torture or to cruel, inhuman, degrading treatment or punishment [5].

At the same time, according to the decisions of the ECtHR on the case *Denmark, France, Norway, Sweden and the Netherlands v. Greece (Greek case 1969)* the Commission singled out the following stages of the prohibited treatment:

1. Tortures: inhuman or degrading treatment aimed at getting information or confession or punishing.

2. Inhuman treatment or punishment: such a treatment that intentionally causes severe mental or physical sufferings and considering the stated circumstances can't be justified.

3. The treatment, degrading the dignity, behavior or punishment; the treatment, humiliating impertinently one person in the presence of others or forcing the person to act against him/her personal will or personal beliefs [19].

In case *Ireland v. The United Kingdom (1978)* the Court amended each of three stages of the prohibited treatment considering the demands set out in Art.3 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

1. Torture: inhuman treatment, committed intentionally and causing extremely serious and severe sufferings.
2. Inhuman treatment or punishment: causing severe mental and physical sufferings.
3. The treatment, degrading the dignity, behavior: humiliation intending to cause the victim's immense feeling of fear, sufferings and the sense of personal deficiency. Such humiliation also intends to disparage the dignity of a victim, and, if possible, break his/her physical or mental resistance [16].

Consequently, when prosecuting persons responsible for violating the evidence obtaining procedure using the torture, the precedents practice of the ECtHR and the Convention for the Protection of Human Rights and Fundamental Freedoms shall be used.

In this respect, it would be highly recommended to employ the definition of the notion of torture, set out in Part 1 of Art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Pursuant to this international regulatory act, torture is deemed as any act intentionally causing severe pain and sufferings, physical or mental, to any person in order to receive some information or confession from this person or from the third person, to punish him/her for the acts he/she or the third person has committed or for the acts he/she is suspected of committing, and also, to frighten or compel him/her or the third person, or any other reason based on the discrimination of any kind, when such pain or sufferings are caused by public officials or any other persons, being presented officially, either because of their incitement, or with their knowledge of, or with their tacit consent. This notion does not include pain or sufferings, having arisen from purely legal sanctions, integrally existing along with sanctions or caused by them incidentally [6].

There are a number of norms in the Criminal Code of Ukraine providing for the criminal liability for unlawful actions regarding the evidence obtainment procedure in criminal proceedings (e.g. Art. 374 of the Criminal Code of Ukraine *Violation of the Right to Protection*, Art. 364 *Abuse of Power or Authority*, Art. 365 *Excess of Power or Official Authority by an Employee of a Law Enforcement Agency*, Art. 366, *Work-related Counterfeit*, Art. 367 *Work-related Negligence*, etc.) [6].

A purely formal violation of the evidence obtainment procedure may lead to the disciplinary liability of the criminal proceedings main subject if these violations were committed, inter alia, after the expiry date of the pre-trial investigation, although, some investigative actions were preplanned till the expiry date, but were not carried out due to the investigator's heavy workload or due to some other similar reasons. And, other similar cases may lead to the disciplinary liability of the criminal proceedings main subject.

Problematic issues may also arise when applying the norms of the Law of Ukraine *On the Procedure for Compensation of Damage Inflicted on Citizens by*

*Unlawful Acts of Bodies Fulfilling Operational and Investigative Activity by the Bodies of the Pre-Trial Investigation, Prosecutor's Office and Court* which, on the other hand, need some kind of optimization [14].

As a matter of fact, such an approach will allow excluding the instances of rendering acquittal verdicts or forcedly soft verdicts by the courts. This may become possible due to prohibition to admit some facts as evidence regarding purely formal grounds for the violations of their obtainment procedure or if the evidence was obtained substantially violating the legal status of the criminal proceedings actor. A. V. Panova brings numerous examples of such situations [13].

In particular, the ruling dated August 20, 2015 concerning the case № 667/4011/15-k Komsomolsky District Court of Kherson found the protocol to be inadmissible evidence regarding such grounds. In accordance with Part 2, Art. 237 of the CPC of Ukraine the dwelling inspection is conducted in compliance with the rules provided for the dwelling search or any other person's possessions. Art. 234 of the CPC of Ukraine regulating the search procedure specifies that the search shall be conducted based on the investigating magistrate entry. The court found unreasonable the prosecutor's reference onto the notice of the apartment owner allowing to conduct the search of his/her apartment. The court substantiates such a decision by stating that the law doesn't provide for the owner's consent to conduct an inspection or a search of an apartment. According to Art 233 of the CPC of Ukraine such consent is only possible if the dwelling was penetrated by another person, thus it doesn't exempt the prosecutor and investigator from the responsibility of petitioning to the investigating magistrate to conduct the search or inspection of the apartment. According to the demands set out in Part 2 of Art. 240 of the CPC of Ukraine, the investigative experiment, conducted in a dwelling or any other person's possessions, shall be carried out only with the voluntary consent of the person owning it, or on the basis of the investigating magistrate entry being petitioned by an investigator and conformed with a prosecutor, or by a prosecutor, being considered in due order provided for consideration of petitions for conducting a search of a dwelling or other persons possessions. At trial the accused explained that he/she hadn't agreed to conduct the investigative experiment in his/her apartment and the prosecutor's reference onto the existence of a written notice to conduct an inspection of an apartment in his/her case is deemed unreasonable. The court found the investigative experiment's protocol inadmissible [13, p. 55].

Hence, the court refused to admit the information obtained while inspecting the apartment and during the investigative experiment as evidence. The court underpinned its decision by declaring that there was not any prior judgment entry to conduct the aforementioned actions according to Part 2, Art. 237 and Part 2, Art. 234 of the CPC of Ukraine, irrespective of the fact that the owner agreed to conduct the inspection of his/her apartment, as such consent might serve as basis

only in case of penetrating the apartment or other person possessions according to Art. 233 of the CPC of Ukraine. Moreover, the apartment owner didn't allow conducting the investigative experiment in it at all pursuant to Part 5, Art. 240 of the CPC of Ukraine.

A.V. Panova analyses the grounds for recognizing the information inadmissible as evidence also within the framework of violating the essential terms of the permission to conduct specific investigative actions. To support this, the author brings a vivid example of conducting the search or inspection of some other person's apartment or possession than has been stated in the judgment entry on granting the respective permission. For example, the panel of judges of the Appellate Court in Kyiv oblast recognized the prosecution evidence inadmissible by the judge entry dated January 1, 2014 with regard to Case № 361/7678/2013r-k. The court supported its decision by showing that some essential terms violations of the investigating magistrate permission took place, significantly infringing the rights of the accused. In accordance with Arts. 234-235 of the CPC of Ukraine the dwelling or other possessions search (the vehicle also belongs to this according to Art. 233 of the CPC of Ukraine) is carried out on the basis of the magistrate court entry, which among other things shall include the exact dwelling or other possessions address, that have to be searched. However, the investigating magistrate entry to search the dwelling where the accused lives doesn't contain any information allowing to search any other possession, e.g. a car. Thus wise, the fact of finding drugs in the car itself can not indisputably prove they belong to the car owner, considering that drugs were seized violating the above stated norms, and the car owner isn't the accused, but absolutely another person. Regarding the foregoing the panel of judges stated that there are not any persuasive evidence proving that the methadone and opium being seized during the search belong to the accused [13 pp. 58-59].

In the same aspect, this author provides the arguments and practical examples regarding the recognition of information inadmissible:

- the information obtained beyond the one-month period of the courts entry on the permission to search the dwelling or other person's possessions in accordance with Clause 1, Part 2, Art. 235 of the CPC of Ukraine;
- obtaining information while conducting an investigative action or action applying the measures ensuring the court proceedings being held at the place other than stated in the investigating magistrate entry, etc [13, c. 58-59].

Also the national and foreign practice is widely considered, including the practice of the ECtHR concerning the unconditional admission of information obtained through torture or other use of violence as evidence, where the prohibition of the latter, on one hand, is of absolute character and has no exceptions or arguments. On the other hand, recognizing such information as

inadmissible evidence special attention should be paid to *circumstance influence on to evidence authenticity and accuracy when obtaining it* [13, pp. 63-75]:

- Part 2, Art. 11 and Clause 2, Art. 87 of the CPC of Ukraine [9];
- Art. 28 and Part 2, Art. 64 of the Constitution of Ukraine [7];
- Art. 5 of the Universal Declaration of Human rights [1];
- Art. 7 and Art. 10 of the International Covenant on Civil and Political Rights [12];
- Art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. [6];
- Art.3 of the Convention for the Protection of Human Rights and Fundamental Freedoms [5].

In this regard it seems reasonable to highlight that there is no need to put an emphasis both on the authenticity and accuracy of the information obtained violating these or those norms of the procedural law as well as other legal acts including the ones using violence, fraud and other illegal methods. The authenticity of information also includes its accuracy.

The accused person shall bear the responsibility for the above mentioned violations and for the evidence obtaining when the substantial infringements of the widely recognized expert methodology took place or when the use of expert methodology not recognized by set procedures occurred, bearing at the same time high quality features. The accused person must bear such kind of responsibility that is able of preventing committing such infringements of the evidence obtaining procedure.

But in this respect, if the main subject of the criminal proceedings doesn't challenge the authenticity of the information obtained violating the norms set out in the CPC of Ukraine, including the norms of Arts. 86-90 and others of this Code, or essentially violating the highly recognized expert methodology or using the expert methodology not recognized by set procedures, and also if the main subject doesn't challenge the evidence significance and high quality concerning the absence of internal irretrievable contradictions, so then such information shall be admitted as proper, authentic and of high quality to the proof process. Such situations shall not lead to the recognition of such information as inadmissible evidence only because of formal grounds that give rise to the acquittal verdicts rendering based on violating the evidence obtaining procedure.

Due to these formal reasons several acquittal sentences have recently been passed. In particular, on November 26, 2014 Mykhailivskiy District Court of Zaporizhzhia oblast rendered an acquittal verdict with regard to Case № 321/954/14-k, proceedings № 1-kp/321/102/2014, regarding the pre-trial investigation of some episode without including the information about this episode into the Uniform Register of Pre-trial Investigations and without appointing the prosecutor and investigator to this episode. On December 24,

2014 Orihivskiy District Court of Zaporizhzhia oblast rendered an acquittal verdict with regard to Case № 323/3329/15-k considering the corresponding grounds, proceedings № 1-kp/323/245/15, considering the corresponding procedure of a person's search, seizure and inspection of the improvised weapon.

Another example demonstrates how Korosten city District Court of Zhytomyr oblast passed a judgment entry with regard to Case № 279/5103/13-k, dated September 10, 2013, finding the information, contained in the expert summary and designated after the expiry term of the pre-trial investigation, inadmissible as evidence [13, p.104]. Regarding the similar grounds, Novomyrhorod District Court of Kirovohrad oblast rendered a verdict on September 9, 2014 with regard to Case № 395/414/1-k, proceedings № 1-kp/395/41/2014, found the information, obtained by the defendant after the expiry term of the pre-trial investigation, inadmissible as evidence [13, p. 103-104].

However, A.V. Panova set out these issues only descriptively and not only failed to resolve them but supported the eligibility of the aforementioned and other acquittal sentences of courts, infringing, in fact, the norms set out in Part 1, Art. 3 of the Constitution of Ukraine. Nevertheless, in our opinion, the state shall recognize, provide and even more importantly, restore the legal status first and foremost of the injured person. And the acquittal verdicts rendering under the above presented circumstances infringed the legal status of the injured person as the party to the criminal proceedings most of all. As a matter of fact, the afore expressed reasons and numerous practical examples inspired us to explore the main basic properties of evidence in criminal proceedings deeper, to scrutinize it and to come to the following conclusions. First of all, the above stated examples straightforwardly demonstrate the incompetence and/or the corruptness of the judges, as the significant infringement of the pre-trial investigation procedure, established by the CPC of Ukraine, that may be regarded as the basis for recognizing certain information as inadmissible evidence in a particular case, is deemed to take place only when some doubts appear concerning the authenticity of the information obtained during the pre-trial investigation, as emphasized by the ECtHR decision in Case *Prada v. Germany*, dated March 3, 2016. It is specifically underscored by means of this case that *nothing indicates the police acted unfairly herein or with the intention of violating the formal procedure*. Regarding the information declaring the presence of evidence (narcotic drugs herein) and the possible doubts concerning its authenticity, the Court asserted that the parties do not deny that the drugs were really detected in the applicant's dwelling, being used exclusively by him. Also, the appellant didn't contradict the expert's summary. The Court therefore sees no doubt as to the authenticity of the evidence. In this regard, the ECtHR came to the conclusion that considering such circumstances the trial was fair, and therefore the violations of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms don't take place [17].



If one applies the above mentioned decision of the ECHR to all the considered practical examples, it can be noted that the formal violations of the pre-trial investigation procedure that happened to be, do not give grounds to doubt the authenticity, significance and high quality of the evidence obtained, and therefore the investigator and the prosecutor shall bear the responsibility for the above stated violations. Also, in our opinion, an expert conducting an expertise and violating the widely recognized expert methodology while doing it, or using the expert methodology not recognized by set procedures shall bear the responsibility. However, these infringements can not be considered the ones giving grounds to recognize the evidence obtained as inadmissible evidence in the stated cases, especially taking into account its overall value along with other evidence in the case.

Practical examples demonstrating the evidence recognition inadmissible, vividly confirm the relevance of the proposed implementation of the continuous procedural documentation of work with evidence sources concept, long before the introduction of the new edition of the CPC of Ukraine in general and Art. 214 of the CPC of Ukraine in particular. Further improvements of this norm include first of all the admission to criminal proceedings of all inspection types and personal evidence investigation, and the prosecutor's sanctions permitting, all the other procedural actions aimed at receiving the sufficient number of evidence affirming the presence or absence of the crime features in the case, or circumstances excluding the case proceedings. This approach grants the opportunity to improve the concept of the continuous procedural documentation of work with personal and substantive evidence sources, before starting the criminal proceedings (after finding such sources), a range of actions, set out by the CPC of Ukraine and containing the sufficient level of procedural guarantees affirming the authenticity of the evidence obtained, will be available [10, pp. 192-193].

This problem continued its existence after the adoption of a new CPC of Ukraine in 2012. Special attention should be drawn to the fact that this Article of the CPC of Ukraine refers to the submission of a statement or a report exactly on a committed criminal offence. And, therefore, when adding such information into the Uniform Register of Pre-trial Investigations one has to make sure that the criminal offence is being committed and not the wrongs, although this criminal offence may contain the features of the wrongs. To answer this question one shall assign and conduct the expertise, which is not only prohibited till adding the information into such register, but even presupposes certain forms of liability for such acts being committed by a prosecutor or any other public officer.

Consequently, even nowadays the scientific statements keep their topicality, as such state of affairs in practice leads to a great number of complications, infringements, and even falsifications of material sources or their procedural documentation. For example, the so-called preliminary study of the substances

similar to drugs is conducted. And very often such a study totally changes or destroys the substances. A criminal case is brought before the court relying upon the results of this study. Finding the drugs becomes the legal cause of action, and after that the expertise is appointed, which will definitely show the false results as the object of the expert research has been totally changed or absent at all [10, pp. 63-64]. The similar legislatively unresolved situations remain in many other cases as well, when without appointing and conducting the expertise before adding the information into the Uniform Register of Pre-trial Investigations, it appears impossible to decide whether some object, device or mechanism, especially self-made, belongs to a certain type of weapon, the degree of physical damage caused, and therefore whether there are some reasons to assert the features of the criminal offence, etc.

Analyzing some other grounds for recognizing certain information as inadmissible evidence, one has to point out some drawbacks of the legislative approach and the appropriate judicial practice, and some author's vision of grounds and limits of employing the hearsay information as evidence. For instance, the Appellate Court of Odesa oblast, by judgment entry, dated June 11, 2015 with regard to Case 520/14721/13-k excluded the hearsay evidence from the trial court sentencing analysis explaining this by stating that such evidence was not agreed with the parties and therefore is inadmissible [13, p. 145].

Likewise, the Appellate Court of Vinnytsia oblast by judgment entry, dated September 24, 2015 regarding Case № 127/11102/14-k stated that the lawyers appeal complaint was assiduously proved. The lawyer demonstrated that by providing arguments of the complainant guilt, the trial court unreasonably referred to the witness evidence, who was the complainant mother, as she didn't witness the above-mentioned events herself and testified from her daughter-in-law or other person hearsays. Pursuant to Part 1, Art. 97 of the CPC of Ukraine the court may admit the hearsay evidence if the parties agree to admit it as evidence. The proceedings documents assert that the party didn't agree to it. Considering the above mentioned, the court can not consider the witness evidence and shall exclude this evidence from the verdict as reference to prove the accused guilt of a crime he/she is charged with [13, p. 145].

However, the above pointed out legislative approach and the appropriate judicial practice infringe the professional accomplishment of the law enforcement activity each type, including the judicial activity dealing with criminal cases reviews and considerations [11, p. 33; 15, pp. 19-20, pp.155-156, etc.]. The position outlined, by A.V. Panova [13, p. 145] stating that the dependence of hearsay evidence admissibility on the parties positions is deemed to reveal the parties consent in criminal proceedings, and realizing the adversary proceeding principle, contradicts, to our mind, the more balanced and deliberate offer to replace the herein stated principle with the principle of the objective truth.

Regarding the above stated, one should concluded, that the previously expressed [2, pp. 20-22; 15, pp. 169-173, etc.] options of the precise defining the essence and the evidence fundamental and additional legal properties, need some kind of improvement to consider:

- the admissibility not as the result of evidence fundamental legal property, but as the result of assessment, including the information control considering the inherent unity of only three evidence fundamental legal properties such as significance, authenticity and high quality. Regarding this, one has to dwell upon only such previously suggested admissibility constituents as the provisions of a certain legal act and/or generally known facts, and/or prejudicial facts, and/or presumptions along with the evidence;

- the high quality of information if it doesn't include the inherent contradictions, making it impossible to create the univocal internal belief of the criminal proceedings main subject;

- the legality and one another component of the prior comprehension of the evidence high quality. And this component is deemed as only such violations of evidence obtaining procedure leading to the appropriate legal responsibility of the guilty person (investigator, judge, expert). Ant at same time it is considered to be an obstacle to use such kind of information as evidence if the specified evidence obtaining procedure has not lead to the appearance of the main criminal proceedings subject doubts concerning the significance, high quality and more importantly, the authenticity of the information presented.

In view of the foregoing, such a version of the article titled *Evidence, Its Properties, Sources, Subjects, Procedure and Obtaining actions, and Forms Operating them* of the CPC of Ukraine seems to be the most reasonable, which would legislatively protect the following provisions:

1. Any information about the fact in general or its component in particular is considered to be an evidence if obtained by means of material or personal sources of that type of information on condition that he evidence will acquire the inseparable unity of such fundamental legal properties as significance, authenticity and high quality during the assessment process including the verification. And only due to these grounds the information might be included into the proof process as evidence. This kind of evidence can also be used in the proof process if it acquires such additional fundamental legal properties as consistency and sufficiency all together to make certain interim or final procedural decisions by the main criminal proceedings subject (the investigator, the head of the investigating department, the investigating judge, the panel of judges, the judicial chamber, the joint chamber, the Supreme Court Grand Chamber).

2. Evidence fundamental legal properties are explicated in the following way:

2.1. Information is seen to be significant if by using it one can confirm or rebut the legal fact (circumstance) of the fundamental, special or partial proof subject or proof fact as the interim thesis of this proof subject.

2.2. Information is seen to be authentic if it properly ascertains the circumstances of the fundamental, special or partial proof subject and that:

2.2.1. Pertinently reflects both the circumstances of the criminal offence acts (event, phenomenon) preparations and/or commission, or of the criminal offence acts (event, phenomenon) concealment as well as any other acts (events, phenomena) or the features and properties of things, documents or human beings.

2.2.2. Improperly reflects the circumstances of the above stated legal facts due to remote, meteorological, educational, psychological, physiological and other peculiarities of its perception by the personal source. It also improperly reflects the process of memorizing, storing, reproducing and transmission of information about the above-mentioned legal facts to criminal proceedings main subject.

2.2.3. Properly explicates the reasons of the improper legal facts presentation stated above.

2.2.4. Appears to be proper or improper but deliberately false, and in this regard the evidence acquires the appropriate authenticity considering the case on providing such deliberately false evidence or such deliberately false expert findings.

2.3. The information is considered to be of high quality if doesn't contain any meaningful contradictions and gives opportunity to come to a firm conclusion.

2.4. The coherent whole of evidence is such the whole of evidence in which one evidence doesn't contradict another one, and the existing contradiction might be eliminated by stating the authentic arguments supporting one evidence and the false arguments supporting another evidence.

2.5. The sufficient whole of evidence is such the whole of evidence that by means of general assessment can create the main criminal proceedings subject clear internal belief (without external factors of influence) enabling to currently accept certain interim or final procedural decision in case.

2.6. The provisions of a certain legal act adhering to the rules of their competition or collision solution if necessary, may be used in the proof process along with the evidence. And the generally known facts and/or prejudicial facts and/or presumptions, if the main subject of the criminal proceedings doesn't doubt the significance and/or authenticity and/or high quality of such facts may also be used in the proof process along with the evidence.

2.7. The criminal proceedings proof process includes:

2.7.1. Clarifying the nature, succession and other consistent patterns of work with personal and material sources of evidence.

2.7.2. Planning, organizing and versioning of work with the sources.

2.7.3. Ascertaining the sources of such information by gathering material sources and/or using personal sources.

2.7.4. Evidence obtaining by investigating the material sources and/or direct or indirect communication with personal sources.

2.7.5. The evidence assessment and control to consider its admissibility as evidence on condition that this kind of information is significant, authentic and of high quality, is consistent and sufficient together with other evidence to make certain decisions to deter criminal offence.

2.7.6. The use of evidence to make certain interim or final procedural decisions.

2.7.7. Documenting the procedure and circumstances of finding out the material sources and involving the personal sources, also the procedure of obtaining such information, its assessment and use as evidence while making certain interim or final procedural decisions.

3. The investigator (including the head of the pre-trial investigation body) and the judge (panel of judges) have the right to obtain evidence. The expert and the active search officer have the right to obtain information too, but only as an exception provided for by Part 2 of the current Article, conducting investigative actions:

- 1) registering the full confession of committing criminal offence;
- 2) obtaining the oral statement or a written notice of committed criminal offence or its preparation;
- 3) detention and examination of the persecuted;
- 4) examination of the personal source;
- 5) personal sources face-to-face examination;
- 6) notice of charges and examination of the suspect;
- 7) evidence control and/or evidence detailing of the suspect, the injured, the complainant or witness, present at the place of the committed criminal offence, or any other place significant for the case;
- 8) experiment with the presented personal sources and without them;
- 9) presentation for ordinary, counter or group identification of the persecuted, the injured, the witness, other personal source, material evidence;
- 10) survey (inspection, personal research) of the committed offence place, region, premises, vehicle, person's corpse, the alive person body, other material sources;
- 11) person's corpse exhumation;
- 12) study of the document;
- 13) the search of premises, region, vehicle, personal source;
- 14) the material sources seizure;
- 15) arresting the funds, other property and transfer it to the storage;
- 16) means of communication control;

- 17) announcing the accused, the defendant search;
- 18) obtaining the patterns of an expertise and of similar judicial actions.

4. If the process of evidence obtaining needs involving certain special knowledge, the main criminal proceedings subject assigns the expertise and the expert conducts it, and if the covert measures need to be conducted, the main criminal proceedings subject assigns the expertise and the active search officer fulfills the appropriate task.

5. Survey (inspection, personal search) of the criminal offence place, or any other place (region, premises, vehicle), significant for the case. And the prosecutor's sanctions permitting, any other procedural action out of the above stated (investigative, judicial, expert) may be conducted before adding the information concerning real or hypothetical criminal offence being prepared, endured or having been committed already, into the Uniform Register of Pre-trial Investigations on condition that one cannot obtain the sufficient whole of evidence regarding the presence or absence of criminal offence features with regard to such kind of actions, or considering the circumstances excluding the proceedings with regard to the case.

6. Material sources including the audit and inspection certificate, etc, may become the main subject of criminal proceedings possession via their vindication, or in case of their voluntary delivery and obtaining from natural and legal persons. Such evidence obtaining becomes possible due to personal or expert investigation of material sources or/and studying them within the framework of procedural investigative or judicial actions.

7. The main criminal proceedings subject has the right to obtain evidence by means of any natural or legal person's assistance, including the defense lawyer or prosecutor, via:

- 1) the voluntary delivery of the significant material sources for this very case, belonging to them;
- 2) providing information about the hypothetical or actual location of those material objects or persons that may presented as material or personal sources correspondingly with regard to this case;
- 3) if the natural or legal person took part in criminal proceedings then he/she may assist by putting questions or filing the motion to improve the process of obtaining such information directly and/or the appropriate court proceedings procedure.

8. The investigator presents evidence (grants the possibility to perceive the nature and features of such kind of evidence and its obtaining procedure to the criminal proceedings participants) producing the investigative action record, the judge, the investigative judge, the panel of judges, the judicial chamber, the joint chamber, the Supreme Court Grand Chamber present evidence producing the judicial hearing register, experts or the panel of experts produce the expert

findings, the general assessment and the evidence use is fulfilled by the main criminal proceedings subject in cases provided for by the Code in the form of:

8.1. Decree to provide an order to conduct certain procedural action (covert measures);

8.2. Decree to assign another subject to conduct certain procedural action (covert measures);

8.3. Decree to eliminate the law violations, reasons and conditions favoring the criminal offence commitment;

8.4. The investigator's or prosecutor's decrees to adopt any procedural decision provided for by the code, and the judge's decree (panel of judges) to adopt any interim procedural decision;

8.5. The verdict of guilty or the acquittal verdict;

8.6. The judge's entry (panel of judges) on another final case solution;

8.7. The motion of the interested person to accept certain procedural decision by an investigator, prosecutor or judge;

8.8. The mentioned person's complaints against the actions, including the decisions of the main criminal proceedings subjects;

8.9. Subject's appeals authorized by the code;

8.10. Subject's cassation complaints;

8.11. Applications to review the judicial decision due to newly found circumstances and exclusive circumstances.

Herein, it is deemed reasonable to underscore that the investigator, the head of the pre-trial investigation body and the prosecutor with regard to the direct conduct of the pre-trial investigation shall not be considered the party to the criminal proceedings due to Clause 19, Part 1, Art. 3 of the CPC of Ukraine as it seems unreasonable.

After all, the afore stated provisions contradict the norms, first and foremost of the Part 2, Art. 9 of the CPC of Ukraine, under which the prosecutor, the head of the pre-trial investigation body, the investigator shall research the criminal proceedings circumstances fully, comprehensively and impartially, detect the circumstances accusing the suspect, and the circumstances acquitting the suspect, the accused, and also to detect the circumstances commuting the punishment of aggravating it, to assess them in a due manner, and to provide the arrival at the legal and impartial procedural decisions.

In our opinion it should be prohibited to oblige the persons, belonging to the prosecution to reveal the circumstances, acquitting the subject or commuting his/her punishment.

The position of the Part 2, Art. 9 of the CPC of Ukraine seems to be more correct, pursuant to which the investigator, the head of the pre-trial investigation body, the prosecutor regarding the possibility to directly conduct separate procedural actions, the investigative judge and the judge shall be recognized the

subjects of the criminal proceedings conduct. The defense lawyer and the prosecutor, performing the function of the state prosecutor shall be considered as the parties to the proceedings. In this respect the function of the procedural leadership shall switch over from the prosecutor to the head of the pre-trial investigation body (inquiry, pre-trial investigation).

Y. Lantsedova suggested her own solution how to correlate between the evidence nature and evidence fundamental and additional legal properties and the admissibility of such kind of information that shall be considered only as a result of this evidence assessment. S. Lyhova developed this vision of a problem dwelling upon the firm realization of some specific types of criminal and other legal liability for violating the evidence obtaining procedure. These both points of view don't seem to be absolutely exhaustive and comprehensive, they don't insist on the finality of these solutions, but just create the appropriate theoretical and legal basis to elaborate the conventional approaches with regard to the process of wide and comprehensive scientific discussion.

## References

1. *Zahalna deklaratsiia prav liudyny (ros/ukr). Pryitania ta proholosh. rezol. № 217 A (III) Hen. Asambl. OON vid 10 hrud. 1948 r.* URL: [https://zakon.rada.gov.ua/laws/show/995\\_015](https://zakon.rada.gov.ua/laws/show/995_015).
2. Kyrychenko O. A., Lantsedova Yu. O. *Osnovy roboty iz dzherelamy antykryminalnykh vidomostei. Lektsiia № 3. Kurs lektsii z kryminalistyky: navch. posib. 2-he vyd. Mykolaiv: MNU imeni V. O. Sukhomlynskooho, 2017. 72 s.* URL: [http://philology.mdu.edu.ua/?page\\_id=344](http://philology.mdu.edu.ua/?page_id=344) <59>
3. Kyrychenko O. A., Tuntula O. S. *Osnovy roboty iz dzherelamy antydeliktnykh vidomostei. Lektsiia № 3. Kurs lektsii z kryminalistyky: navch. posib. 3-tie vyd. Kyiv: Vydavets Nazarov O. A., 2019. 90 s. (dodatok do elektronnoho referatyvno-naukovoho zhurnalu «Sudovo-psykholohichna ekspertyza. Zastosuvannia polihrafa i spetsialnykh znan v yurydychnii praktytsi»).*
4. Kyrychenko S. A. *Sutnist i klasyfikatsiia dokaziv ta yikh dzherel u kryminalnomu sudochynstvi: geneza i mozhlyvosti udoskonalennia : dys. ... kand. yuryd. nauk : spets. 12.00.09 «Kryminalnyi protses i kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist»; Klasychnyi pryvatnyi universytet. Zaporizhzhia, 2009. 221 s.*
5. *Konventsiiia pro zakhyst prav liudyny ta osnovopolozhnykh svobod. Pidpysana 04 lyst. 1950 r. zi zminamy ta dopovnenniamy, vnesenymy Protokolamy № 11 vid 11 trav. 1994 r. № 14 vid 13 trav. 2004 r., ratyfikovana zakonom Ukrainy № 475/97-VR vid 17 lypn. 1997 r.* URL: [http://zakon.rada.gov.ua/laws/show/995\\_004](http://zakon.rada.gov.ua/laws/show/995_004)
6. *Konventsiiia proty katuvan ta inshykh zhorstokyykh, neliudskykh abo takyykh, shcho prynyzhuiut hidnist, vydiv povodzhennia i pokarannia. Pidpysana vid imeni Uriadu URSR 27 liut. 1986 r. v Niu-Yorku. Ratyf. 26 sichn. 1987 r. iz zaster. ne vyznannia st. 20 ta p. 1 st. 30 Konventsii.* URL: [https://zakon.rada.gov.ua/laws/show/995\\_085](https://zakon.rada.gov.ua/laws/show/995_085)
7. *Konstytutsiia Ukrainy: zakon Ukrainy vid 28 cherv.1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy (VVR), 1996. № 30. St. 141, iz zminamy, zghidno iz zakonom Ukrainy vid 7 liut. 2019 r. № 2680-VIII.* URL: <http://zakon2.rada.gov.ua/laws/show/254k/96-vr>
8. *Kryminalnyi kodeks Ukrainy : zakon Ukrainy vid 5 kvit. 2001 r. № 2341-III . Vidomosti Verkhovnoi Rady (VVR), 2001. № 25–26. St. 131, zi zminamy zghidno iz zakonom Ukrainy № 2628-VIII vid 23 lyst. 2018 r.* URL: <http://zakon4.rada.gov.ua/laws/show/2341-14>
9. *Kryminalnyi protsesualnyi kodeks Ukrainy. Zakon Ukrainy vid 13 kvit. 2012 r. № 4651-VI. Vidomosti Verkhovnoi Rady Ukrainy (VVR). 2013. № 9-10. St. 88, iz zminamy, zghidno iz zakonom Ukrainy № 2599-VIII vid 18 zhovt. 2018 r. VVR. 2018. № 46. St. 374.* URL: <http://zakon4.rada.gov.ua/laws/show/4651-17>



10. Lantsedova Yu. O. Sutnist i poslidovnist roboty z osobystisnymi i rehovymy dokaziv u kryminalnomu sudochynstvi: dys. ... kand. yuryd. nauk: spets. 12.00.09 «Kryminalnyi protses ta kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist»; Khark. nats. un-t vn. sprav. Kharkiv, 2009. 229 s.

11. Lantsedova Yu. O., Smirnov M. M. Rozvytok innovatsiinoho rozuminnia poniattia ta vlastyvostei dokaziv pidstav dopustymosti takoho rodu vidomostei v antykryminalnomu sudochynstvi. *The Journal of Eastern European Law. Zhurnal skhidnoievropeiskoho prava. Mizhnar. naukometrychni bazy Index Copernicus International, HeinOnline.* 2018. № 55. S. 25-37. URL: [http://easternlaw.com.ua/wp-content/uploads/2018/09/lantsedova\\_smirnov\\_55.pdf](http://easternlaw.com.ua/wp-content/uploads/2018/09/lantsedova_smirnov_55.pdf)

12. Mizhnarodnyi pakt pro hromadianski i politychni prava. Pryiniaty 16 hrud. 1966 r. Hen. Asambleieiu OON. Dok. OON A/RES/2200 A (XXI). Ratyf. 19 zhovt. 1973 r. № 2148 - VIII, iz zaster. ne vyznannia p. 1 st. 48 Paktu. URL: [https://zakon.rada.gov.ua/laws/show/995\\_043](https://zakon.rada.gov.ua/laws/show/995_043)

13. Panova A. V. Vyznannia dokaziv nedopustymymy u kryminalnomu provadzhenni: dys. ... kand. yuryd. nauk: spets.: 12.00.09 «Kryminalnyi protses ta kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist»; Natsionalnyi yurydychnyi universytet imeni Yaroslava Mudroho. Kharkiv, 2016. 226 s.

14. Pro poriadok vidshkoduvannia shkody, zavdanoi hromadianynovi nezakonnymy diiamy orhaniv, shcho zdiisniuiut operatyvno-rozshukovu diialnist, orhaniv dosudovoho rozsliduvannia, prokuratury i sudu: zakon Ukrainy vid 1 hrud. 1994 r. № 266/94-VR. Vidomosti Verkhovnoi Rady Ukrainy (VVR), 1995. № 1. St. 1, iz zminamy, zghidno iz zakonom Ukrainy № 901-VIII vid 23.12.2015 r. VVR, 2016. № 4. St. 44. URL: <https://zakon.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80>

15. Tuntula O. S. Otrymannia dokaziv ta formy yikh predstavlennia, otsinky ta vykorystannia u kryminalnomu provadzhenni Ukrainy: dys. ... kand. yuryd. nauk: spets. 12.00.09 «Kryminalnyi protses i kryminalistyka; sudova ekspertyza; operatyvno-rozshukova diialnist»; Natsionalna akademiia prokuratury Ukrainy. Kyiv, 2013. 233 s.

16. Fulei T.I., Kuchiv O.M. Zbirnyk vytyahiv z rishen Yevropeiskoho sudu z prav liudyny, rekomendovanykh dlia vyvchennia pry pidhotovtsi do pysmovoho anonimnoho testuvannia u mezhakh ispytu dlia kvalifikatsiinoho otsiniuvannia suddiv na vidpovidnist zaimanii posadi. Dopovnennia do materialiv, rozmishchenykh u pidrozdili «Pidhotovka do kvalifotsiniuvannia» rozdilu «Na dopomohu suddi» na veb-saiti Natsionalnoi shkoly suddiv Ukrainy (sichen 2018 r.). Kyiv: Natsionalnoi shkoly suddiv Ukrainy, 2018. 84 s.

17. *Case of Prade v. Germany (Application no. 7215/10)*. Sprava «Prade proty Nimechchyny»: Judgment European Court of Human Rights, 3 March 2016, final 03/06/2016. HUDOC: database. Electronic data. Strasbourg, 1999–2016. URL: <http://hudoc.echr.coe.int/eng>

18. *Mapp v. Ohio*, 367 U.S. 643. United States Supreme Court. 1961. Rezhym dostupu: URL: <http://caselaw.findlaw.com/us-supreme-court/367/643.html>.

19. The Greek case. Yearbook of the European Convention on Human Rights, no 12, 1969. URL: <https://www.worldcat.org/title/greek-case-1969/oclc/29532085>

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