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EVIDENCE IN THE CRIMINAL PROCEDURE LAW OF ENGLAND AND RUSSIA

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***Abstract*—The protection of civil and human rights is not possible without an efficient procedural law system. This article examines the evidence as a key component of the criminal procedure law of England and Russia. The procedural law of Russia was greatly influenced by foreign countries, including the procedural law of England, which permits to conduct a comparative legal analysis of evidence in the criminal procedure law of these two countries, to study the features of evidence, types of sources, to consider the particularities of witness testimony, production of forensic evidence.**

The authors conclude that the study of evidence as part of criminal procedural law in the modern multipolar world is crucial to ensure a successful protection of civil and human rights in national and international proceedings.

Index Terms—*Criminal procedure, England, Evidence, Procedural law, Protection of human rights, Russia.*

INTRODUCTION

Human rights have occupied an important place in people's lives throughout the history of the society. The emergence of statehood has created the need to enshrine them in various legal acts. Such branch of law as procedural law is no exception. Different legal systems do not equally interpret the concept of the rights and obligations of participants of legal proceedings, as well as the approach to evidence. This is true for the criminal procedural law of both England and Russia. Therefore, we will consider various aspects of this institute.

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One of the most debated issues in the theory and practice of procedural law is the notion, types and value of evidence in criminal proceedings.

It should be noted that the notion, types and value of evidence in the procedural law of

England and Russia diverge considerably. That is primarily due to the difference in legal systems, various approaches to the issues of search, collection, fixation, recovery, examination and use of evidence. The examination of evidence in the judicial proceedings also appears to be of great significance. The examination of evidence in mixed criminal proceedings differs from the examination of evidence in adversarial proceedings.

The authors have studied scientific works and opinions of scholars in the field of criminal procedure in England and Russia. They conducted a survey questionnaire with participation of various specialists involved in criminal proceedings in Russia. They established a number of common approaches to the study of evidence in the two countries, as well as the existing differences in matters of admissibility and relevance of the evidence to the case.

Each country has its own foundations and peculiarities in the use of evidence, its own historical experience. The experience of different countries is instructive, diverse and interesting. The authors note that it is very important to consider the use of evidence in England, as it has its own features, as compared with the rest of Europe and Russia.

The autonomy of England from Europe and the insular environment formed natural prerequisites for the emergence of unique state institutions that have no analogues. The lawyer and politician Peter Archer affirmed that the English judicial system is full of surprises ; it defies any scientific classification, and even those who have devoted their lives to serving it do not pretend to have grasped it in detail [1].

One of the most important tasks of the court is to establish the true facts on the basis of reliable evidence. In English procedural law, evidence occupies an important and, we should note, a special place. In this respect, it should be emphasized that there is a special branch of law in England – the law of evidence. For many years it was based on precedents and various legislative acts, which could regulate certain procedural issues. Nowadays, legal acts start to play a more important role, and precedents are referred to in disputable cases.

Besides, it is worth mentioning that England is a country where the legal norms that emerged several centuries ago have been in force for a significant period of time. It is also worth noting that England has had a jury trial for centuries. The court needs to correctly interpret the evidence, to explain the rules of evidence and to make fair judgements on this basis. The jury can rule on guilt, on innocence, on changing the charge. It was the jury trial that contributed to the emergence of case law at that time. The development of information technology in England even led to the creation of a unified computer system that served the courts and allowed to find a precedent similar to the debated situation in 2-3 minutes. In recent years, the number of jury trials has diminished in criminal cases; approximately 1% of criminal cases are tried with their participation [2]. This is primarily due to several factors:

- economic impracticality – too much cost of maintaining the trial is not justified by the advantages of maintaining it;

- the jury trial is cumbersome, complex and time-consuming;

- the jury does not always fulfil its duty honestly and may have prejudice when dealing with specific cases.

It should also be noted that there have never been any procedural codes in England that would regulate the preparation and the very process of judicial review of cases, there is no common approach to the classification of evidence. Such peculiarities have led to the emergence of a unique approach to the evidentiary basis for making right judgements by different courts, and evidence has become the foundation of the procedure. The main evidence in legal proceedings in England is witness testimony, as all testimony, whether of an expert, the accused or the victim will be considered as witness evidence and, as mentioned earlier, practically all other evidence is introduced only through witnesses, or rather their testimony.

An interesting peculiarity in the English procedural rules is the fact that in the course of the trial, the statements of witnesses can be used as evidence, *i.e.*, the witnesses, who are not experts in a particular field, still can give their opinion about the health condition of the victim, distance, time, speed, behavior, handwriting and other similar things. Thus, in fact, the witness acts as an informal expert and only in one case the witness cannot “assume”, namely, to conclude whether the person is guilty or innocent.

In England, any competent person can be a witness. This term refers to a person’s ability to clearly perceive, memorize and finally report on certain actions, phenomena and situations. But in a number of cases, a person who is, in essence, competent, still cannot testify. The spouse of the accused person cannot be competent, nor can the accused be competent himself, nor can a judge be a witness in a case in which he is presiding, nor a juror in a case in which he is on the jury. Also, at the discretion of the judge, certain persons may be entrusted with the special privilege of not testifying. The point is not that the privileged person is entirely exempt from testifying, but that he or she is entitled not to answer certain questions, on the subject matter or otherwise.

In addition to privileges, English criminal procedure also provides for what we call exemptions. Such exemptions allow persons with an immunity to give a testimony, which, absent such immunity, could have lead to a criminal liability. For example, if a person is an accomplice to a crime, then in certain cases, when testifying, he or she can avoid further criminal prosecution. That is, such immunity is given only to rather valuable witnesses when it is impossible to obtain information other than from them.

In England, it is customary to call as witnesses police officers who have carried out certain investigative actions, this is necessary to decide on the admissibility of evidence. Police officers also often appear as experts on the methods used to commit a crime.

An expert in English criminal proceedings is also a witness, his or her testimony regarding

certain phenomena is considered more authoritative, as it is usually based on a high level of knowledge in a certain field, as well as considerable experience. The role of the expert is to deliver objective information about a phenomenon, as well as to provide his or her expert opinion.

Therefore, it is clear that the English system has evolved and is continuing to develop in a way that is different from that of all European countries, as it establishes evidence as a separate category and gives it a central role in the procedural law.

The procedural law of Russia is organized in a different way. It has been greatly influenced by foreign countries, including the procedural law of England, which now gives us the right to conduct a comparative legal analysis of evidence in the procedural law of these two countries, to study the features, types of sources, ways of collecting, assessing and verifying evidence.

The first documents mentioning the evidentiary process in Russia appeared in 1864 in Alexander II's Statute on Criminal Procedure. This statute mandated the judge to direct the course of the proceedings in the manner that would most effectively facilitate the discovery of the truth. The document also stated that if the accused was found not guilty, the judge had to release him immediately. The judge could order the prosecutor to pay the costs of the trial if the prosecutor acted in bad faith and, if the accused filed a request, also to compensate him for damages for an unjustified prosecution.

The next stage of development of legislation on evidence in Russia corresponds to the period following the October Revolution of 1917. It was related to the change of the political leadership of the country. The Decree "On the Court" declared the abolishment of the district courts, the prosecutor's office, the bar, and the institute of judicial investigators. "After the October Revolution of 1917, the legislative acts on courts did not regulate the issues of evidentiary law" [3].

On June 23, 1918, the instruction of the People's Commissariat of Justice of the RSFSR "On the Organization and Functioning of Local District Courts" was published, Article 34 of which stated that the People's Court was not bound by any formal considerations. It decided whether to admit certain evidence, or to request it from certain persons whether they possessed it or not. The evidence could include the following: expert opinions, witness statements, material evidence, explanations of the claimant, the respondent. Unfortunately, the instruction did not cover the concept of written evidence, the procedure for verifying and assessing the evidence by the court.

In the Soviet Union, the relationship between the individual and the state was built in a special way, namely starting from the state and moving to the individual. Consequently, the state was primary, and the person was subject to its influence. A completely different situation arose when the Criminal Procedure Code of the Russian Federation was adopted in 2001. The current procedural code, with its subsequent amendments and additions, established the system of evidence, defined their types, and Article 75 of the Criminal Procedure Code of the Russian

Federation, in particular, specified inadmissible evidence [4].

Conclusion

The authors established that despite the different approaches in the criminal procedural law of Russia and England, the special role is played by witness testimony, expert opinion and material evidence. Electronic evidence is becoming increasingly important.

English procedural law is fundamentally different from what we have in Russia. The adversarial principle, on which all court proceedings in England are based, also provides a very interesting and unique basis for pre-trial proceedings and court proceedings.

On the one hand, England may lack proper codification of all the provisions governing this branch of law, however, on the other hand, this field is very flexible and multifaceted, which creates a huge room for the choice of strategy in court proceedings and for resolving the case on the merits.

REFERENCES

[1] P. Archer, *English Judicial System*. Moscow, 1959, p. 26.
[2] S.V. Bobotov, *Contemporary Jury Trial on the Example of Great Britain*. Moscow, 2011, p. 77.
[3] O.I. Tchistyakov (ed.), *The History of the National State and Law. Part 2*. Moscow, Bek Publishing House, 1999, p. 78.
[4] Criminal Procedure Code of the Russian Federation of December 18, 2001 No. 174-FZ (last amended on December 25, 2023 by Law No. 672-FZ).