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THE PRINCIPLE OF THE FREE EVALUATION OF EVIDENCE

Matis Jakub

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Annotation. The principle of free evaluation of evidence, enshrined in Article 2(12) of the Code of Criminal Procedure, is one of the fundamental principles of criminal proceedings, which applies to all phases of criminal proceedings and applies to all law enforcement authorities and courts. A key element of this principle is the internal conviction of the prosecuting authorities and the court, which must be based on a logical analysis of the evidence and taking into account the specific features of the case. The essence is that none of the evidence has a prescribed weight in criminal proceedings, and there are no specific limits or scope of evidence that can and should prove a certain fact at different stages of criminal proceedings. This paper focuses on the analysis of the principle of free evaluation of evidence, its legal grounding, objective criteria for determining the probative value and the influence of decision-making practice on its interpretation and application.

Key words: evidence, free evaluation of evidence, intrinsic conviction.

1. Introduction.

The principle of free evaluation of evidence is one of the basic principles of criminal proceedings, enshrined in Section 2(12) of Act No. 301/2005 Coll. of the Code of Criminal Procedure (hereinafter referred to as the "Code of Criminal Procedure"). This principle guarantees that evidence, as a key procedural act of the criminal investigation authorities (hereinafter referred to as the "the CID") and the court, is not based on formalistic or mechanical rules, but on an individual assessment of the evidence in a particular case. The evaluation of evidence must respect the legality of the evidentiary process and the objective limits which ensure a fair trial and the protection of the rights of the parties.

The principle of the free evaluation of evidence is inextricably linked to the concept of intrinsic conviction, the interpretation of which will be the subject of this paper. The work of establishing the correct facts is extremely demanding, as it requires not only logical and legal thinking but also the ability to perceive the particularities of a case. The law does not give any particular weight to any evidence, nor does it lay down precise rules as to the amount of evidence necessary to establish the facts. The objective criteria for assessing evidence have thus been shaped primarily by case-law.

2. The main aim of this paper is to analyse the principle of free evaluation of evidence, its meaning and application in criminal proceedings. The thesis will focus on the interpretation of the essence of the principle of free evaluation of evidence and its anchoring in criminal law, the assessment of objective criteria on the basis of which evidence is assigned evidentiary value, as well as subjective factors, and last but not least, it will focus on the influence of decision-making practice on the interpretation and application of the principle of free evaluation of evidence.

3. Basic principles of criminal procedure.

The fundamental principles of criminal procedure should be understood as the guiding legal ideas on which the organisational and institutional foundations of the entire criminal procedure are

built. Basic principles of criminal procedure are given their specific status by the Code of Criminal Procedure [9].

The purpose, aim, meaning and essence of criminal proceedings can only be fulfilled and achieved if they are subordinated to higher rules, norms, principles, i.e. certain principles which must be applied across the board in criminal proceedings, while other, other criminal provisions respect them and are in harmony and conformity with them. The importance of the fundamental bases of criminal procedure is reflected by the fact that they are set out right at the beginning of the Code of Criminal Procedure in Article 2(1) to (21) [5].

The Constitution, as the cornerstone among all national laws, plays an extremely important role in determining any principle of criminal procedure, because by the way it is enshrined, it attempts to regulate the criminal process, which, by virtue of its typical features, interferes with fundamental civil rights and freedoms [5].

Apart from Section 2 of the Criminal Procedure Code, the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Charter of Fundamental Rights of the European Union, and the Charter of Fundamental Rights and Freedoms are also sources of the basic principles of criminal procedure [9].

4. Presentation of the main material.

Principle of free evaluation of evidence

That principle is explicitly expressed in Article 2(12) of the Code of Criminal Procedure: *"The law enforcement authorities and the court shall evaluate the evidence lawfully obtained and the evidence admissible under section 119(5) according to their own internal belief based on a careful consideration of all the circumstances of the case, individually and in the aggregate, irrespective of whether it was obtained by the court, the law enforcement authorities or any of the parties."*

In the earlier definition of Section 2(12) of the Criminal Procedure Code, the wording "as well as evidence admissible under Section 119(5)" was absent. Such evidence means *"Evidence obtained by unlawful coercion or threat of such coercion, or by the giving of an unlawful benefit or promise of an unlawful benefit to a cooperating person, or a benefit which the prosecutor has failed to report to the court in contravention of this Act, shall not be used in the proceedings except as evidence against the person who used such coercion or threat of coercion or gave or promised such benefit to a cooperating person"*.¹

Together with the search principle and the principle of establishing the facts of the case beyond reasonable doubt, it is one of the fundamental principles of evidence in criminal proceedings.

The Supreme Court, referring to the principle of free evaluation of evidence,² does not give any evidence a priori special significance or special or otherwise more significant probative force [8].

The overriding principle means that it implies that the law enforcement authorities and the court evaluate each piece of evidence separately, but consequently all of them in relation to each other. With equal consistency and with their own attitude, they evaluate the evidence testifying in favour of the accused, as well as the evidence testifying against the accused, based on their own knowledge, conscience, conviction, experience, education [10].

Its essence is that none of the evidence has a prescribed weight or significance in criminal proceedings and there are no specific boundaries or scope of evidence which is to prove a particular fact at different stages of criminal proceedings. In other words, neither qualitative nor quantitative requirements or rules are set for the degree of evidence needed to prove the fact to be proved [4].

¹ Section 119(1)(a)(2)(A). 5 of the Criminal Procedure Code.

² Article 2(12) of the Code of Criminal Procedure.

Individual and cumulative evaluation of legally obtained evidence means that the court evaluates it independently of whether it, the law enforcement authorities or any of the parties obtained it [3].

The process of proof, not only in terms of the evaluation of the content of the individual pieces of evidence, but also in terms of their scope, is governed by the principle of the free evaluation of evidence. This principle enables a decision on the merits to be reached after logical considerations have been carried out in relation to all the evidence presented and taken [11].

The law enforcement authorities and the court assess evidence on the basis of their own knowledge, conscience and inner conviction, taking into account their professional experience, legal knowledge and education [7].

The only general rule determining the scope of evidence is the principle expressed in Article 2(10) of the Code of Criminal Procedure, according to which the law enforcement authorities shall proceed in such a way as to establish the facts of the case to the extent necessary for the issuance of a decision. The decision as to which evidence is to be taken falls exclusively within the discretion of the court, which subsequently evaluates it in accordance with the principle of the free evaluation of evidence. The scope of the evidence is inherently linked to the subject matter of the evidence, which is expressed in Article 119(1) of the Code of Criminal Procedure. It is a demonstrative provision which, by means of the word 'in particular', gives examples of facts to be proved in criminal proceedings:

- whether an act has been committed and whether it has the elements of a criminal offence,
- who committed this act and for what motives,
- the seriousness of the offence, including the causes and conditions of its commission,
- the personal circumstances of the offender to the extent necessary to determine the type and amount of the sentence and the imposition of a protection measure and other decisions,
- the consequence and the amount of damage caused by the offence,
- the proceeds of crime and the means of committing it, their location, nature, condition and value,
- property for the purposes of confiscation of proceeds of crime.¹

The principle of free evaluation of evidence is based on the decisive criterion of the **internal conviction** of the law enforcement authorities and the court. This conviction constitutes a thought process which enables the evaluating authority to individually determine the scope of the evidence and to select the proposed evidence. This selection takes place on the basis of the substantive relevance of the evidence submitted by the parties to the proceedings, taking into account its *quantity, quality* and *weight* in comparison with the evidence already taken [11].

The internal conviction is based on the activity of thought, which creates sufficient room for discretion for the subject of the evaluation to define the scope of evidence and to make a selection of the evidence proposed by the procedural parties with regard to its content, its possible content and its relation to the fact to be proved. It is mainly the task of the court and therefore the parties objections that some of the evidence proposed by them was not carried out or refused to be carried out as unjustified cannot be grounds for appeal [2].

The term **"intrinsic belief"** can generally be understood as a law enforcement agency's view of what it believes to be true and what it does not. The evaluation of evidence is directed towards the acquisition of an inner conviction, i.e. a subjective certainty about the truth in a particular case, but this does not mean that these actors evaluate evidence only on the basis of some arbitrary judgment. The evaluation of evidence is based on a logical judgment resulting from a careful consideration of all the evidence and on a responsible analysis of each piece of evidence individually, as well as of all the evidence in its interconnectedness [6].

¹ Article 119(1) of the Criminal Procedure Code).

In the evaluation of evidence, analytical and synthetic methods of cognition, induction, deduction, methods of formal and dialectical logic, as well as other common methods of cognition, are primarily applied so that they can result in a clear, comprehensible and convincing decision. Subsequently, the analysis of knowledge about the source of evidence, about the relevance of the facts arising from the evidence, about their connection and continuity with other facts and evidence, about their consistency with the knowledge of practice and science is used to obtain a picture of the fact that is the subject of proof [13].

The judge's training, length of professional experience, education, professional experience, and the extent to which he or she has had the opportunity to familiarize himself or herself with the evidence and with the entire criminal case, which includes theoretical mastery of the evidence, familiarity with issues and evidence that other parties have overlooked, and the ability to use this knowledge in arguments with opposing parties, are all guiding factors in the formation of a judge's internal conviction [4].

The principle of the free evaluation of evidence must be reflected in the reasoning of every procedural and substantive decision. Accordingly, Article 168 of Criminal Procedure Code states: *"Where a judgment contains a statement of reasons, the court shall briefly state in the statement of reasons which facts it has taken to have been proved, on which evidence it has based its findings of fact and what considerations it has followed in assessing the evidence adduced, in particular if they are contradictory. It must be clear from the statement of reasons how the court has dealt with the defence, why it has not granted the requests for the taking of further evidence and what legal considerations it has applied in assessing the facts proved in accordance with the relevant provisions of the law on the question of guilt and punishment. If the judgment contains additional statements, those statements must also be justified."* As we have already stated, the free evaluation of the evidence does not imply subjective arbitrariness of the court and the CID, but on the contrary, it is limited by objective criteria:

- **Legality of evidence** - Evidence is considered legal only if it has been procured and conducted in accordance with the procedural standards and principles of the law of evidence, as well as with other provisions of criminal and other branches of law.
- **The admissibility of evidence** - although it is generally derived from its legality, it is not unconditionally conditioned by it. Even evidence that fails the legality test must be assessed in terms of legitimacy and proportionality.
- **Truthfulness of the evidence** - it is assessed in the context of the overall material evidentiary situation, whereby it is necessary to evaluate its consistency with the facts.
- **Persuasiveness of evidence** - reflects its ability to have a real impact on the decision-making of law enforcement and the court.
- **Credibility of the evidence** - it is assessed in particular in terms of its source, the person who procured or presented it, and the circumstances in which the evidence was proposed, obtained and conducted.
- **The relevance of evidence** - lies in its relation to the fact to be proved and in the way it is related to it [9].

Subjective factors such as:

- Education
- Legal knowledge
- Practical knowledge acquired during the waiting period, verified by prescribed examinations
- General practical and life experience,
- The level of general knowledge and opinions of the judge,
- Worldview orientation of the judge
- Political and religious beliefs also play roles.

These subjective factors affect the personality of the judge and cause differences to exist not only between the decision of the investigator, prosecutor and judge but also between judges of different levels when the same evidence and the same findings are made [4].

In the past, the so-called legal theory of evidence, which is the exact opposite of the principle of free evaluation of evidence, was applied and reflected both in positive and negative terms:

- a fact was perceived to have been established if it was proved by a certain quantity or quality of evidence, which was precisely defined by law (e.g. two credible witnesses or one testimony of a nobleman was sufficient)
- without the legally required quantity and quality of evidence, a fact could not be considered established or proven [4]. In conclusion, we need only add that the principle of the free evaluation of evidence applies to all stages of the criminal proceedings, and equally so to all law enforcement agencies and the courts.

5. Conclusions.

The topic of the present paper was to analyse the significance of the general principle of criminal procedure, the principle of free evaluation of evidence, set out in Article 2(12) of the Criminal Procedure Code. Evidence, as the most important procedural act of the court and the CID aimed at establishing facts important for the decision in the case, cannot constitute arbitrariness and must have its legal and objective limits. The bulk of the text was devoted to the interpretation of the defining feature of the principle of free evaluation of evidence, "internal conviction." This is a difficult, complex exercise of thought, consisting in assessing the credibility, completeness and relevance of the evidence, which is a necessary means of enabling the facts of the case to be properly established. It is necessary to take into account the particularities of the case in question, thereby avoiding a mechanistic approach to the assessment of the evidence. The law does not deal with quantification in the case of evidence, since it does not specify the amount of evidence to be taken in order to establish a particular fact, nor does it attach any particular importance to any evidence. The law does not lay down any rules as to the quantum of evidence necessary to prove a fact, nor does it provide for the weight to be given to particular pieces of evidence. In this respect, most of the objective criteria for the evaluation of evidence have been shaped by case-law.

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