DOI https://doi.org/10.30525/2592-8813-2026-1-4

DOCTRINAL APPROACHES TO DEFINING THE SUBJECT OF PROOF: CONTENT AND STRUCTURAL ELEMENTS

Kateryna Kolomiiets,
Postgraduate Student at the Department of Criminal Procedure,
National Academy of Internal Affairs (Kyiv, Ukraine)
ORCID ID: 0000-0003-2805-3246
k.work.kolomiiets@gmail.com

Abstract. This article examines the subject of proof as a fundamental concept in the theory of evidence within criminal procedure law. Based on a comparative analysis of doctrinal approaches proposed by Ukrainian and foreign legal scholars, as well as an examination of the substantive law of Ukraine, France, Germany, the United Kingdom, Austria, and Canada, the article elucidates the essence, content, and structural elements of the subject of proof. The author emphasizes the significant discrepancies in understanding this category across different legal systems, which have practical implications for pre-trial investigation and judicial proceedings. The article demonstrates that a precise determination of the subject of proof is a prerequisite for effectively achieving the objectives of the criminal process and rendering lawful and reasoned procedural decisions. The study also analyzes potential approaches to defining the subject of proof in criminal proceedings under Article 191 of the Ukrainian Criminal Code.

Key words: Subject of proof, Criminal procedural proving, Circumstances subject to proof, Comparative law, Evidence theory, Pre-trial investigation, Legal facts.

Introduction. While examining the criminal law of Ukraine and other jurisdictions, including Common Law systems, we have noted inconsistencies in the approaches to evidence in criminal proceedings. Furthermore, the issue of the subject of proof, its significance, and its statutory regulation remains a subject of debate. The concept, content, and structural elements of the subject of proof are fundamental to achieving the objectives of criminal proceedings in every case, ensuring that the guilty are punished and the innocent are not held liable.

The main purpose of the article is to examine the subject of proof, its content, and structural elements by exploring doctrinal perspectives, analyzing legal acts, and synthesizing these to develop an original understanding of the subject of proof and the circumstances subject to proof. To achieve this objective, the following tasks have been set:

1) to analyze the doctrinal approaches of Ukrainian and foreign scholars regarding the subject of proof;

2) to examine legal acts in terms of the statutory recognition of the subject of proof as a concept within the codified acts of various jurisdictions;

3) to analyze the potential subject of proof in criminal proceedings under Article 191 of the Criminal Code of Ukraine.

The correct definition of the subject of proof is essential for criminal proceedings, as the realization of the purpose and objectives of the criminal process primarily depends on proving its constituent facts and circumstances. Currently, most legal practitioners face significant challenges in defining the subject of proof both in general and within specific criminal proceedings, which subsequently adversely affects pre-trial investigation results and the evidentiary process. An error in defining the subject of proof, stemming from a lack of knowledge regarding its constituent circumstances, can trigger either an exhaustive yet irrelevant or, conversely, a superficial establishment of facts subject to proof. This, in turn, complicates and sometimes precludes the rendering of lawful and well-founded procedural decisions in criminal proceedings.

Materials and methods. The empirical and normative basis of this study comprises the legislation of Ukraine, France, Germany, the United Kingdom, Austria, and Canada, as well as current case law. Furthermore, the scholarly works of leading Ukrainian and foreign experts in the field of criminal law and procedure were analyzed. To achieve the objective and address the designated tasks, a comprehensive set of general scientific and specialized legal methods was employed. The formal-legal method was applied to analyze the normative content of the subject of proof. The system-structural method was used to define the interrelationship between the general components of the subject of proof and the circumstances subject to proof in specific criminal proceedings. The comparative-legal method allowed for a juxtaposition of national and international doctrinal approaches to the subject of proof. The application of this multifaceted methodology ensured a comprehensive analysis of the subject of proof and enabled the identification of commonalities and differences in the perception of this category across various legal systems.

The results and discussion. The issue of the subject of proof in criminal proceedings has been investigated by such scholars of criminal procedure as Yu. P. Alenin, V. D. Bernaz, I. V. Hloviuk, V. P. Hmyrko, V. H. Honcharenko, Yu. M. Hroshevyi, O. V. Kaplina, Ye. H. Kovalenko, L. M. Loboiko, M. M. Mykheienko, V. T. Nor, M. A. Pohoretskyi, V. O. Popeliushko, D. B. Serhieieva, O. S. Starenkyi, S. M. Stakhivskyi, M. S. Strogovich, I. O. Sukhachova, V. M. Tertyshnyk, L. D. Udalova, V. V. Cherniei, S. S. Cherniavskyi, A. M. Cherniak, Yu. M. Chornous, S. A. Sheyfir, O. H. Shylo, M. Ye. Shumylo, and O. H. Yanovska, among others. The works of these researchers are foundational to both the science of criminal procedural law in Ukraine and the theories of criminal evidentiary law. Nevertheless, a unified approach to defining the concept of the «subject of proof» remains absent. This underscores the relevance of its study within the framework of modern criminal procedural science, particularly in light of the dynamic changes occurring in criminal procedural legal relations.

As aptly noted by Yu. M. Hroshevyi and S. M. Stakhivskyi (2007), criminal procedural proof, being cognitive in nature, permeates the entirety of criminal procedural activity and constitutes its primary scope and substance. It is entirely reasonable to assume that the effectiveness of pre-trial investigation and judicial proceedings is wholly dependent on its outcomes. The result serves as a criterion for assessing the fulfillment of such a task of the criminal process as ensuring a speedy, thorough, and impartial pre-trial investigation and trial, the achievement of which critically depends on the subject of proof.

The concept of the «subject of proof» is among the fundamental notions in the theory of evidence. Its theoretical and practical significance is consistently emphasized in criminal procedural literature; however, definitions of the concept itself remain ambiguous and require further investigation within the framework of modern criminal procedural science. It should also be noted that the current Criminal Procedure Code of Ukraine (CPC) does not contain a formal definition of the «subject of proof». Similarly, the legislation of foreign countries generally lacks this definition in their legal acts, a point we shall return to later.

In Ukrainian doctrine and practice, it is customary to equate the subject of proof with the set of circumstances listed in Part 1 of Article 91 of the CPC of Ukraine, namely: the event of the criminal offense (time, place, manner, and other circumstances); the guilt of the accused in committing the criminal offense, the form of guilt, motive, and purpose of the offense; the type and amount of damage caused, as well as the amount of procedural costs; circumstances that influence the degree of severity of the offense, characterize the personality of the accused, or aggravate or mitigate the punishment; circumstances that exclude criminal liability or serve as grounds for closing criminal proceedings; circumstances that provide grounds for exemption from criminal liability or punishment; circumstances confirming that money, valuables, and other property subject to special confiscation were obtained as a result of a criminal offense and/or constitute income from such property, or were intended (used) to induce a person to commit an offense, to finance or materially support it, or as a reward for its com-

mission, or constitute the object of a criminal offense, including those related to illicit trafficking, or were sought out, manufactured, adapted, or used as instruments or means of committing a criminal offense; and circumstances that serve as grounds for applying measures of a criminal legal nature to legal entities. However, a systemic analysis of these provisions suggests that the subject of proof is significantly broader and may possess an individual character due to its specification in each particular criminal proceeding. Furthermore, the current wording of Part 1 of Article 91 of the CPC of Ukraine creates preconditions for an accusatory bias. Despite various approaches in legal literature, the low efficiency and quality of pre-trial investigations necessitate new scholarly research into these issues.

It is essential to consult the doctrine of the criminal process of Ukraine. V. O. Popeliushko emphasizes the interconnection between the circumstances of the «subject of proof» and decisions in a criminal case, defining the «subject of proof» as the range of all legally significant factual circumstances provided for by criminal and criminal procedural law, which are subject to proof for making decisions in criminal proceedings as a whole or on specific procedural and legal issues (Popeliushko, 2001, p. 185). The opinion of M. A. Pohoretskyi is also pertinent, as he defines the «subject of criminal procedural proof» as a circle of circumstances (structural elements of the subject) to be established in criminal proceedings. He underscores that this range of circumstances is normatively defined in Part 1 of Article 91 of the CPC of Ukraine and specified in the relevant provisions of the Criminal Code of Ukraine regarding a particular criminal offense (Pohoretskyi, 2007, p. 576). V. V. Vapniarchuk interprets the concept of the «subject of proof» as a circle of circumstances, determined both by law and the discretion of a particular subject, which must be established in every criminal proceeding (Vapniarchuk, 2017, p. 408). This scope is sufficient for making the appropriate procedural decision or performing a specific procedural action. O. S. Starenkyi notes that the «subject of proof» expresses the goal of proof in criminal proceedings and constitutes the set of circumstances subject to proof (Art. 91 of the CPC of Ukraine), while the «limits of proof» represent the boundaries within which the investigation of all circumstances of the criminal proceedings is carried out (Starenkyi, 2014). Emphasized that the concepts of «subject of proof» and «limits of proof», though interrelated, are not equivalent; each has its own unique legal content and purpose in criminal procedural proof. The correlation between the «subject of proof» and the «limits of proof» remains a subject of debate; however, we consider it appropriate to explore this issue in further scholarly works.

Summarizing the above, we should note that to correctly define the «subject of proof» it is necessary to proceed from the premise that a concept, as a form of thought, is a way of reflecting reality where the object is revealed through a set of its essential attributes. Thus, we consider it appropriate to highlight the essential characteristics of the subject of proof in criminal proceedings:

1) it is a component of cognitive-practical and mental activity;

2) it must align with the CPC of Ukraine in the context of the tasks facing authorized subjects in criminal proceedings;

3) it encompasses facts and circumstances relevant to the correct resolution of the offense;

4) it consists in the specification and disclosure of those circumstances that constitute the ultimate goal of proof in criminal proceedings;

5) it is a fundamental category of the theory of proof.

Consequently, the subject of proof represents a fundamental category of evidence, consisting in the disclosure of the scope of circumstances (structural elements of the subject) to be established in criminal proceedings, as well as other circumstances relevant to the correct resolution of a specific case that are subject to proof in that particular proceeding. The subject of proof includes the circumstances normatively defined in Part 1 of Article 91 of the CPC of Ukraine; however, it is broader and is specified for a particular type of criminal offense, taking into account the provisions of the Criminal Code of Ukraine (Kolomiiets, 2022, pp. 192–200).

In exploring the concept of the «subject of proof,» we have already partially addressed the issue of its content. While the concept of the subject of proof defines the essence of this legal phenomenon and answers the question «what is it?», its content reveals its structure, elements, and the specific constituent circumstances, answering the question «what does it consist of?». Disclosing the content of the subject of proof is vital both for the scientific doctrine of understanding the subject of proof as a whole and for practical application, as it specifies which circumstances must be established, what evidence must be collected, and which procedural actions must be performed. The failure to establish, or the incomplete establishment of, any of the circumstances included in the content of the subject of proof leads to the adoption of unlawful and unsubstantiated decisions (Loboiko & Banchuk, 2014, p. 62; Bondarenko, 2024, pp. 197–198). According to dictionary definitions, «content» is the essence or internal peculiarity of something; it refers to certain properties and characteristic features that distinguish a phenomenon or object from similar ones (Busel, 2005, p. 467).

Within scientific doctrine, there is an approach asserting that the content of the subject of proof consists of: 1) a criminal-law element; 2) a civil-law element; 3) a criminal-procedural element.

The criminal-law element of the content of the subject of proof comprises circumstances whose proof and establishment allow for the correct legal qualification of a specific act as a criminal offense. These can partially include circumstances that also constitute the elements of the crime (corpus delicti).

The civil-law element of the content of the subject of proof consists of circumstances that have legal significance for resolving civil-law claims within the framework of the criminal process. These must be proven during the proceedings of every civil action in criminal justice and in cases of potential confiscation of the defendant's property (Vashchuk, 2007, p. 35).

The criminal-procedural element of the content of the subject of proof is formed by circumstances that influence the adoption of criminal procedural decisions in a specific criminal proceeding and are defined by law as grounds for such decisions, such as the dismissal of proceedings, the application of precautionary measures, or the conduct of a search (Loboiko & Banchuk, 2014, p. 172). It is worth noting that circumstances constituting the criminal-law element may sometimes also serve as circumstances for the criminal-procedural element. This approach allows for a systemic disclosure of the content of the subject of proof, demonstrating its multifaceted nature and its connection to various branches of law.

It should be noted that the relationship between the subject of proof and the elements of the offense (corpus delicti) remains a subject of debate despite a significant body of research; however, in our view, they should not be considered identical.

In Common Law jurisdictions, the content of the subject of proof in criminal cases is primarily defined through the concept of «elements of the offense.» The prosecution bears the burden of proving all elements of the offense as prescribed by the relevant statute or law (LexisNexis, n.d.; Salhany & Claxton, 2022). Furthermore, each element must be proven individually according to the «beyond reasonable doubt» standard (BLJ Solicitors, 2022; LexisNexis, n.d.; Salhany & Claxton, 2022; Judicial Commission of New South Wales, n.d.; Wikipedia, n.d.).

Applying the comparative-legal method, we concluded that, unlike Civil Law jurisdictions such as Ukraine, Common Law systems lack the statutory recognition of the «subject of proof» and the specific circumstances subject to proof. Nevertheless, our research revealed that despite the absence of a formal codified category for the «subject of proof» in the criminal process of Common Law countries, they possess a functional equivalent. This equivalent is comprised of the system of facts in issue (including preliminary facts, relevant facts, and facts that constitute the occasion, cause, or effect of facts in issue, as well as facts necessary to explain or introduce relevant facts) and the elements of the offense (actus reus and mens rea). Together, these components constitute the substance of what is recognized in Ukraine as the subject of proof in criminal proceedings (Western Law Students' Society,

2018, pp. 8, 45; Salhany & Claxton, 2022, p. 4; Evidence Act of Trinidad and Tobago, 2012). By analyzing various sources, we can conclude that «facts in issue» refer to any fact or facts from which, either by themselves or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows. Meanwhile, «elements of a criminal offense» are the constituent parts of a crime that the prosecution must prove according to the «beyond reasonable doubt» standard (The Evidence Act [Tanzania], 2025, p. 218; Indian Evidence Act, 1872; dJetlawyer, 2020; Manupatra, n.d.; Western Law Students' Society, 2018, p. 8; Power Legal, n.d.).

Thus, it can be noted that the basis of the content of the functional «subject of proof» in Common Law countries is a three-component structure of the elements of the criminal offense: 1) actus reus (criminal act, objective side) – the offense with which the accused is charged was committed. The prosecutor must prove that a certain act prohibited by law was carried out. This includes establishing the physical act, its consequences (for material offenses), and the causal link between the act and the consequences; 2) identity – the prosecutor must prove that the accused committed the crime, i.e., establish the identity of the offender. This issue is particularly important in cases where the offender's identity is not obvious; 3) mens rea (criminal intent, subjective side) – finally, it must be established that the accused intended to commit the crime, i.e., that it was a deliberate act or, in some cases, the result of their recklessness or gross negligence. The prosecutor must prove the mental element of the crime, i.e., that the accused possessed the appropriate state of mind at the moment of the act. Different crimes require different levels of mens rea: intention, recklessness, and negligence. However, intention should not be confused with motive. The reasons why a person commits a crime are not a matter for the court's consideration, although they may be important as circumstances confirming one of the three components. There are also certain crimes for which intent is not relevant; sometimes the accused may not even realize they are committing a crime. Such crimes are referred to as «strict liability offenses» and are not the subject of this discussion (Salhany & Claxton, 2022). Due to the lack of statutory recognition of the circumstances subject to proof in Common Law jurisdictions and a general list of such circumstances, we can assert that the «subject of proof» in the criminal proceedings of Common Law countries is shaped individually for each specific offense and even each individual criminal case. Among the shared features, we can observe an inseparable link between substantive and procedural law. Furthermore, it is noteworthy that Common Law jurisdictions employ a conditional division of facts into general («central») facts – «facts in issue» – and other supplementary facts (relevant, evidentiary, and preliminary facts). This approach bears a certain affinity with the classification of structural elements of the «subject of proof» found in Ukrainian doctrine.

Simultaneously, while analyzing the doctrine of German criminal procedural law, we can establish the existence and use of the term «subject of proof» – Beweisthema (German-Ukrainian Legal Dictionary, 2017, p. 95). However, no statutory recognition of this term or the specific circumstances it encompasses was identified, which indicates the individual character of the «subject of proof» in every criminal proceeding.

Thus, the concept of «Beweisthema» is absent from the German Code of Criminal Procedure (Strafprozessordnung – StPO). It is a doctrinal construct derived from general provisions on the collection of evidence (§ 244 StPO), the evaluation of evidence (§ 261 StPO), the presentation of factual circumstances in the judgment (§ 265 StPO), etc.; it serves to specify the range of facts to be established in a particular case. For instance, the provisions of § 160 StPO stipulate that the prosecutor shall investigate not only incriminating but also exculpatory circumstances and ensure the collection of evidence that might otherwise be lost. The prosecutor's investigation also extends to circumstances relevant to determining the legal consequences of the offense. To this end, the prosecutor may seek the assistance of the court. Unlike the Ukrainian CPC, which clearly defines the list of circumstances subject to proof in Article 91, the German Code of Criminal Procedure in § 160 StPO

establishes only a general duty for the public prosecutor's office to «investigate the circumstances» (Sachverhaltsaufklärung). The specific content of these circumstances is further defined by doctrine through the category of «Beweisthema» (subject of proof) and depends on the specifics of the particular case (Strafprozeßordnung, 2024).

At the same time, the subject of proof must be formulated with sufficient precision so that the court and the parties involved in the proceedings understand which fact is to be clarified. Vague, ambiguous, or broad formulations impede the collection of evidence and may lead to its rejection. In criminal proceedings, the subject of proof serves to clarify the event of the crime and circumstances relating to guilt and legal consequences. The subject of proof may pertain to both primary and secondary facts. The subject of proof is generally defined by the participants in the proceedings within the scope of the motions they submit. The court reviews it for compliance with the criteria of admissibility, relevance, and probative value (suitability), after which it decides on the examination of the evidence (MTR Legal Wiki, n.d.).

In the Austrian criminal process, the content of the «subject of proof» is revealed through the concept of «Beweisthema» (subject of proof) and the system of «Tatsachen» (facts) subject to proof and establishment (Golser, 2018, pp. 96). Referencing Austrian doctrine and judicial practice, the author proposes a clear gradation of facts to be established. This is critically important for understanding what constitutes the «subject of proof» and what serves merely as a means for its establishment (Golser, 2018, pp. 9–10). «Decisive facts» («Entscheidende Tatsachen») serve as the core of the «subject of proof» – facts upon which the following depend: which specific criminal act (qualification) has occurred; the presence of circumstances excluding punishment, justifying the person, or precluding prosecution; the establishment of facts determining the application of certain sanctions; the value of stolen property if it affects the qualification, etc. «Relevant facts» («Erhebliche Tatsachen») – these are facts significant for establishing the presence or absence of decisive facts. According to judicial practice, these refer to specific circumstances (evidentiary results) upon which assumptions regarding the so-called decisive facts are based (OGH, 2006). These are circumstances that do not constitute the offense themselves but allow for a logical conclusion regarding decisive facts (for example, an alibi: the accused's presence in a restaurant rather than at the crime scene) (Golser, 2018, pp. 19–32). In Ukrainian doctrine, such concepts are referred to as «evidentiary facts» or «intermediate facts».

Of particular interest is the identification of «subsumable facts» («Subsumierbare Tatsachen») – a category of aggregate facts forming a subset of decisive facts, highlighted by Professor Steininger. These facts describe events (circumstances) so clearly and completely that they can be directly «placed» under the legal norm (under the «Obersatz» – the hypothesis/disposition of the norm), namely tracing a direct link between the facts and the law. They serve as a conditional «bridge» between the real event and the legal qualification (Golser, 2018, pp. 31–35). According to Steininger's teachings, the concept of «subsumable facts» (subject to legal qualification) is narrower than the concept of decisive facts. Given the limited scope of our thesis and the subject of discussion, we believe this issue should be explored in other scholarly works. It should be noted that despite both systems being based on the inquisitorial (investigative) model of Civil Law, the criminal procedure of Germany and Austria is somewhat similar regarding the «subject of proof»; however, we cannot consider them fully identical. Thus, a distinction should be made between the approaches of the German and Austrian criminal procedural doctrines. While the German model (§ 261 StPO DE) emphasizes the free formation of judicial conviction within a single panel, the Austrian model (§ 258 StPO AT) maintains the specificity of evidence evaluation, taking into account the institute of classical juries and the strict formalization of grounds for overturning a verdict. Despite institutional differences, the criminal processes of Germany and Austria demonstrate unity in their approach to the standard of proof: it is based on the priority of «substantive truth» over procedural form and on a clear distinction between facts requiring «strict proof» (matters of guilt) and facts established in a «free manner» (procedural issues).

French criminal procedure – a classic mixed (Romano-Germanic) model that combines elements of the investigative (inquisitorial) and adversarial types – demonstrates a different approach to defining the content of the «subject of proof». Unlike Common Law countries, where the content of the «subject of proof» is determined by the elements of a specific crime, and the criminal process of Ukraine, where the content is commonly believed to be clearly defined by law, the French model provides greater freedom to the investigating judge (juge d'instruction) in determining the scope of circumstances subject to proof, with a unique emphasis on «inner conviction» (l'intime conviction) (Karnavas, 2016; Mermoz, 2019).

The Code de procédure pénale (Code of Criminal Procedure of France) does not contain a detailed list of circumstances subject to proof in a criminal case. The content of the «subject of proof» is determined by the substance of the indictment and the general principles of criminal law. The investigating judge is obliged to collect both incriminating and exculpatory evidence, reflecting the inquisitorial nature of the French process. The evaluation of evidence in the French system is based on the principle of «intimate conviction» (l'intime conviction). The judge assesses whether the circumstances forming the «subject of proof» have been proven based on their inner conviction, shaped by a comprehensive examination of the case. This approach is more subjective compared to the Common Law standard of «beyond reasonable doubt» (Karnavas, 2016).

Accordingly, in French criminal procedure, unlike the CPC of Ukraine (Art. 91), there is no statutory definition of the «subject of proof» (l'objet de la preuve). Doctrine structures it into three blocks: (1) elements of the crime, (2) qualifying circumstances, and (3) circumstances of punishment. The judge freely forms their «conviction», and the l'objet de la preuve is specified during the «instruction» (investigation) stage through the ordre de poursuite (Merle & Vitu, 1967).

Given the above, the approach of the Ukrainian legal scholar M. I. Bazhanov regarding the correlation between the elements of a criminal offense and the «subject of proof» is noteworthy. In his work, the scholar refers to historical data and notes that the «elements of a criminal offense», much like certain other institutes and terms of criminal law, originates from the criminal process – specifically its needs. These elements form the basis for the qualification of a criminal offense, and ignoring them can lead to the incorrect application of the norms of criminal procedure. Thus, by creating a system of mandatory objective and subjective features that define a certain act as a criminal offense, the «elements of the offense» is considered the «core» of the «subject of proof» and influences the «limits of proof» in a specific criminal proceeding. Consequently, when analyzing the «subject of proof», the elements of the crime are always considered its constituent part (Loboiko & Banchuk, 2014; Kolomiiets, 2022)

In our opinion, the «subject of proof» – in terms of its content and constituent elements – is broader than the «elements of the criminal offense», as it encompasses not only the circumstances that include the «elements of the criminal offense» (the object, objective side, subject, and subjective side) but also circumstances that do not affect the legal qualification of the offense yet remain criminally relevant (Zaporizhzhia National University, n.d.).

It should be emphasized that the Ukrainian legislator defined the normative basis for the content of the «subject of proof» by listing the circumstances to be proven in criminal proceedings in Part 1 of Article 91 of the Criminal Procedure Code of Ukraine: «1. In criminal proceedings, the following shall be subject to proof: the event of the criminal offense (time, place, manner, and other circumstances of the commission of the criminal offense); the guilt of the accused in committing the criminal offense, the form of guilt, motive, and purpose of the criminal offense; the type and amount of damage caused by the criminal offense, as well as the amount of procedural costs; circumstances affecting the degree of severity of the committed criminal offense, characterizing the personality of the accused, aggravating or mitigating the punishment, excluding criminal liability, or serving as grounds for closing the criminal proceedings; circumstances serving as grounds for exemption from criminal liability

or punishment; circumstances confirming that money, valuables, and other property subject to special confiscation were obtained as a result of a criminal offense and/or constitute income from such property, or were intended (used) to induce a person to commit a criminal offense, for the financing and/or material support of a criminal offense or as a reward for its commission, or constitute the object of a criminal offense, including those related to illicit trafficking, or were sought out, manufactured, adapted, or used as means or instruments for committing a criminal offense; circumstances serving as grounds for applying measures of a criminal-law nature and special confiscation to legal entities.».

Consequently, unlike the Continental system, where a single normatively defined «subject of proof» exists for all crimes, in the Anglo-Saxon system, the content of the «subject of proof» is determined by the specifics of a particular elements of the offense. There is no general list of circumstances subject to establishment in every criminal case – they depend on the elements of the specific crime (D. M. Paciocco and L. W. Stuesser, 2022).

Exploring the content of the «subject of proof» more deeply, we believe that its internal peculiarity lies in the structural elements of the «subject of proof» itself.

Structure is the interconnection of the constituent parts of a whole, whereas an element is a constituent part. Thus, the structural elements of the «subject of proof» in the theory of criminal procedural law are viewed as relatively independent, logically interconnected groups of legally significant circumstances, the establishment of which ensures the completeness and comprehensiveness of evidentiary activity in every criminal proceeding. As aptly noted in scholarly literature, the structuring of the «subject of proof» allows not only for the determination of the scope of circumstances to be proven but also for the organization of the evidentiary process in accordance with the functional purpose of each group of such circumstances (V. M. Tertyshnyk, 2018; O. V. Kaplina, 2016).

The following should be included among the structural elements of the «subject of proof»:

1) circumstances constituting the ultimate goal of proof in criminal proceedings (in Ukrainian legislation, these are the circumstances defined by Article 91 of the Criminal Procedure Code of Ukraine);

2) other circumstances relevant to the correct resolution of the case and subject to proof (doctrine usually includes intermediate («evidentiary») and auxiliary facts here).

Let us examine the content of the «subject of proof» in more detail, taking as a basis for analysis criminal proceedings regarding misappropriation, embezzlement, or seizure of property through abuse of office (Article 191 of the Criminal Code of Ukraine). It is worth noting that the complexity of proof under Article 191 of the Criminal Code of Ukraine is due to the multifaceted («tripartite») nature of this crime, which combines signs of an offense against property, a corruption component, and affiliation with economic («white-collar») crime. This combination of property, corruption, and economic aspects requires an integrated approach from the subjects of proof to establish the circumstances of the case. It is important to note that similar crimes against property are quite common in other countries; thus, this analysis may be useful not only for Ukrainian scholars.

Consequently, in criminal proceedings regarding misappropriation, embezzlement, or seizure of property through abuse of office, the following circumstances must be established:

The event of the criminal offense (Did the seizure, embezzlement, or misappropriation actually occur? Time, place, and manner of the act); The presence of the «elements of the crime» (the necessary components of the corpus delicti are required, but they are only a part of the «subject of proof», not identical to it); The guilt of the person (Did this person commit the crime? Did they have intent? Did they act with a profit motive?); Circumstances affecting the degree of responsibility (complicity; repetition; recidivism; position, access to property; form of organization, such as a group or conspiracy); Circumstances mitigating or aggravating the punishment (voluntary restitution; sincere repentance; cynicism, abuse of trust); The nature and amount of damage (value of the property; con-

sequences for the enterprise or institution); Causes and conditions that facilitated the crime (insufficient control; violation of financial discipline; gaps in the work of the enterprise's security service).

It should be noted that this list is not exhaustive and may change depending on the crime itself and its qualification. Thus, the ultimate goal of proof in criminal proceedings under Art. 191 of the CC – is the establishment of all seven groups of circumstances (paras. 1–7 of Part 1 of Art. 91 of the CPC), specified regarding: the disposition of Art. 191 of the CC (elements of the crime); the sanction of Art. 191 of the CC (for sentencing purposes); the specific circumstances of the case (individualization); in a volume sufficient for the adoption of a lawful, grounded, and reasoned decision (a verdict or other final decision).

Conclusion. Based on the study conducted, the following conclusions can be drawn:

1) the concept of the «subject of proof» belongs to the fundamental categories of the theory of criminal procedural proof; however, a single settled definition of this concept has not yet been formed in either Ukrainian legal science or judicial practice;

2) the «subject of proof» represents a range of legally significant circumstances, normatively defined in Part 1 of Article 91 of the CPC of Ukraine, which are nevertheless broader and specified regarding a particular type of criminal offense, taking into account the provisions of the Criminal Code of Ukraine. The «subject of proof» comprises three logically interconnected elements: a criminal-law element, a civil-law element, and a criminal-procedural element;

3) the structural elements of the «subject of proof» encompass circumstances constituting the ultimate goal of proof (defined by Art. 91 of the CPC of Ukraine) and other circumstances relevant to the correct resolution of the case (intermediate facts, auxiliary facts);

4) a comparative-legal analysis of the legislation of Ukraine, France, Germany, the United Kingdom, Austria, and Canada demonstrates the absence of a unified approach to the statutory recognition of the «subject of proof». The Civil Law system (Ukraine, France, Germany, Austria) provides for a normatively defined or doctrinally developed «subject of proof», whereas the Common Law system defines the content of the «subject of proof» through the «elements of the offense» and the concept of «facts in issue»;

5) in Common Law jurisdictions (the USA, Canada, the UK), the content of the «subject of proof» is determined by the elements of the crime: actus reus (criminal act), mens rea (criminal intent), and identity. Furthermore, the prosecution must prove each element individually according to the «beyond reasonable doubt» standard;

6) in German and Austrian criminal proceedings, the concept of «subject of proof» (Beweisthema) is a doctrinal construct that lacks statutory recognition but is widely used in judicial practice to specify the range of facts to be established in a particular case. The Austrian model identifies a gradation of facts: «decisive facts» (Entscheidende Tatsachen), «relevant facts» (Erhebliche Tatsachen), and facts subject to subsumption;

7) the French mixed model of criminal procedure provides greater freedom to the investigating judge in determining the scope of circumstances subject to proof, with a unique emphasis on the judge's «inner conviction» (l'intime conviction). French legislation does not contain a detailed list of circumstances of the «subject of proof»; instead, its content is defined through the elements of the crime and circumstances of punishment;

8) the «subject of proof» is a broader and more complex concept than the «elements of the criminal offense». Although the «elements of the crime» constitute the basis («core») of the «subject of proof» and influence the «limits of proof», the «subject of proof» also encompasses circumstances that are not part of the «elements of the crime» yet remain criminally relevant for the adoption of a lawful and grounded decision;

9) the practical application of the concept of the «subject of proof» in criminal proceedings regarding misappropriation, embezzlement, or seizure of property through abuse of office (Article 191 of

the CC of Ukraine) requires a comprehensive approach covering the establishment of: seven groups of circumstances in accordance with Part 1 of Article 91 of the CPC of Ukraine, specified regarding the disposition and sanction of Article 191 of the CC, as well as the individual circumstances of the specific case;

10) the correct definition and understanding of the «subject of proof» are critical for the effective conduct of pre-trial investigations and judicial proceedings, the prevention of errors during the evidentiary process, and ensuring the adoption of lawful, grounded, and reasoned procedural decisions in criminal proceedings.

The necessity for further scientific research in the field of the «subject of proof» is determined by the dynamic changes in criminal procedural legal relations, the low efficiency and quality of pre-trial investigations, the need for the unification of approaches, and the development of judicial practice.

References:

1. BLJ Solicitors. (2022, September 2). Understanding the standard of proof in criminal cases. URL: https://www.bljsolicitors.co.uk/blog/understanding-the-standard-of-proof-in-criminal-cases/ (in English).
2. Bondarenko, O. O. (2024). Predmet dokazuvannia u kryminalnomu protsesi Ukrainy [The subject of proof in the criminal process of Ukraine]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo, 83(3), 196–201. https://doi.org/10.32782/2524-0072/2024-83.3.32 (in Ukrainian).
3. Busel, V. T. (Ed.). (2005). Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy [Great explanatory dictionary of the modern Ukrainian language]. Perun. (in Ukrainian).
4. dJetlawyer. (2020, January 25). Facts in issue: What it means in the law of evidence. URL: https://djetlawyer.com/facts-in-issue/ (in English).
5. Evidence Act of Trinidad and Tobago, Chapter 7:02. (2012). URL: https://www.unodc.org/cld/uploads/res/document/tto/1905/Evidence_Act.pdf (in English).
6. Golser, F. (2018). Der Anwendungsbereich des § 281 Abs 1 Z 5 StPO [The scope of application of § 281 Abs 1 Z 5 StPO] [Diploma thesis, Paris Lodron University of Salzburg]. (in German).
7. Hroshevyi, Yu. M., & Stakhivskyi, S. M. (2007). Dokazy i dokazuvannia u kryminalnomu protsesi: naukovo-praktychnyi posibnyk [Evidence and proving in criminal proceedings: Scientific and practical guide]. KNT; Vydavets Fursa S. Ya. (in Ukrainian).
8. Indian Evidence Act, 1872. https://indiankanoon.org/doc/1031309/ (in English).
9. Judicial Commission of New South Wales. (n.d.). Onus and standard of proof. https://www.judcom.nsw.gov.au/publications/benchbks/criminal/onus_and_standard_of_proof.html (in English).
10. Kaplina, O. V. (2016). Dokazuvannia u kryminalnomu provadzenni: teoriia i praktyka [Proof in criminal proceedings: theory and practice]. Pravo. (in Ukrainian).
11. Karnavas, M. G. (2016, June 16). Civil law approaches to proof. Michael G. Karnavas Blog. https://michaelgkarnavas.net/blog/2016/06/16/civil-law-approaches-to-proof/ (in English).
12. Kolomiiets, K. (2022). Doktrynalni pidkhody do vyznachennia poniattia «predmet dokazuvannia» u kryminalnomu provadzenni [Doctrinal approaches to defining the concept of the «subject of proof» in criminal proceedings]. Visnyk kryminalnoho sudochynstva, (3-4), 192–200. https://doi.org/10.17721/2413-5372.2022.3-4/192-200 (in Ukrainian).
13. Kryminalnyi kodeks Ukrainy [Criminal Code of Ukraine], No. 2341-III. (2001). URL: https://zakon.rada.gov.ua/laws/show/2341-14 (in Ukrainian).
14. Kryminalnyi protsesualnyi kodeks Ukrainy [Criminal Procedure Code of Ukraine], No. 4651-VI. (2012). URL: https://zakon.rada.gov.ua/laws/show/4651-17 (in Ukrainian).
15. LexisNexis. (n.d.). Burden and standard of proof in criminal proceedings. URL: https://www.lexisnexis.co.uk/legal/guidance/burden-standard-of-proof-in-criminal-proceedings (in English).

16. Loboiko, L. M., & Banchuk, O. A. (2014). Kryminalnyi protses: Navchalnyi posibnyk [Criminal process: Study guide]. Vaite. (in Ukrainian).
17. Manupatra. (n.d.). Law of evidence. Chapter 2: Facts and relevancy of facts. URL: http://student.manupatra.com/Academic/Abk/Law-of-Evidence/Chapter2.htm (in English).
18. Merle, R., & Vitu, A. (1967). Traité de droit criminel [Treatise on criminal law]. Editions Cujas. (in French).
19. Mermoz, V. (2019). Les indices en procédure pénale [The indicators in criminal procedure] [Doctoral dissertation, Université Paris-Saclay]. (in French).
20. MTR Legal Wiki. (n.d.). Beweisthema. URL: https://www.mtrlegal.com/wiki/beweisthema/ (in English).
21. Nimetsko-ukrainskyi slovnyk yurydychnykh terminiv [German-Ukrainian legal dictionary]. (2017). NU OYUA. (in Ukrainian).
22. Oberster Gerichtshof (OGH). (2006, June 13). Decision 14 Os 59/06t. EvBl 2006/132; RIS-Justiz RS0120817. (in English).
23. Paciocco, D. M., & Stuesser, L. W. (2022). The practical guide to evidence and proof in criminal cases (2nd ed.). Emond Montgomery Publications. (in English).
24. Pogoretskyi, M. A. (2007). Funktsionalne pryznachennia operatyvno-rozshukovoi diialnosti u kryminalnomu protsesi: monohrafiia [Functional purpose of inquiry activity in criminal proceedings: Monograph]. Arsis LTD. (in Ukrainian).
25. Popeliushko, V. O. (2001). Predmet dokazuvannia v kryminalnomu protsesi [The subject of proof in criminal proceedings]. NaUOA. (in Ukrainian).
26. Power Legal. (n.d.). Beyond reasonable doubt – Proving the elements of a criminal offence. URL: https://www.powerlegal.com.au/beyond-reasonable-doubt-proving-elements-criminal-offence/ (in English).
27. Salhany, R. E., & Claxton, E. W. (2022). The practical guide to evidence and proof in criminal cases (9th ed.). Emond Publishing. (in English).
28. Slovnyk ukrainskoi movy v 11 tomakh [Dictionary of the Ukrainian language in 11 volumes]. (n.d.). URL: https://slovnyk.ua/ (in Ukrainian).
29. Starenkyi, O. S. (2014). Shchodo vyznachennia poniattia mezh dokazuvannia v kryminalnomu provadzenni [On defining the concept of limits of proving in criminal proceedings]. Chasopys Natsionalnoho universytetu «Ostrozka akademiia». Seriia «Law», 1(9), 1–9. URL: http://lj.oa.edu.ua/articles/2014/n1/14sosvkp.pdf (in Ukrainian).
30. Strafprozeßordnung (StPO) [Code of Criminal Procedure of Germany]. (2024). URL: gesetze-im-internet.de. https://www.gesetze-im-internet.de/stpo/ (in German).
31. Tertyshnyk, V. M. (2018). Kryminalnyi protses Ukrainy [Criminal process of Ukraine]. Alerta. (in Ukrainian).
32. The Evidence Act [Tanzania], Chapter 6 [R.E. 2023]. (2025). URL: https://www.nps.go.tz/uploads/documents/sw-1751203347-THE%20EVIDENCE%20ACT-2.pdf (in English).
33. Vapniarchuk, V. V. (2017). Teoriia i praktyka kryminalnoho protsesualnoho dokazuvannia: monohrafiia [Theory and practice of criminal procedural proof: monograph]. Yurait. (in Ukrainian).
34. Vashchuk, B. L. (2007). Predmet dokazuvannia v tsyvilnomu pozovi u kryminalnomu protsesi [The subject of proof in civil claims in criminal proceedings] [Candidate dissertation, Academy of Advocacy of Ukraine]. (in Ukrainian).
35. Western Law Students' Society. (2018). Evidence Summary. URL: https://westernsls.ca/wp-content/uploads/2020/02/Evidence-Summary-.pdf (in English).
36. Wikipedia. (n.d.). Burden of proof (law). URL: https://en.wikipedia.org/wiki/Burden_of_proof_(law (in English).
37. Zaporizhzhia National University. (n.d.). Lektsiia 2. Sklad kryminalnoho pravoporushennia [Lecture 2. Elements of a criminal offense]. URL: https://epkmoodle.znu.edu.ua/pluginfile.php/107928/mod_resource/content/0/Лекція%202.%20Склад%20кримінального%20правопорушення.pdf (in Ukrainian).