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CLASSIFICATION OF PRESUMPTIONS IN CRIMINAL PROCESS OF UKRAINE

Classification used to study the legal presumptions, serves as a way of learning and studying legal phenomena is a logical process of assigning a specific presumption to that or another kind according to certain criteria or bases. The purpose of the classification of legal presumptions is to study this legal phenomenon deep and in detail. Classification of presumptions allows to understand better their role in the legal regulation, to reveal their essence and specific recommendations for their practical use.

Today in legal literature, there are many classifications of legal presumptions, which are held for various reasons, allowing you to fully explore available in the current legislation of Ukraine presumption. The presence of multiple criteria for delineation of a phenomenon enables more significantly its research.

One of the main reasons for the separation of presumptions in general is the fact that their legal consolidation. Depending on their consolidation in the laws, the presumption divided into factual and legal.

During the actual presumption (praesumtiones facti seu hominis) understand the assumptions are not enshrined in legislation and as a result, have no legal value. At the same time, V.A. Oyhenziht factual presumption considers the general, social, illegal [1, p.3, 53]. The legal presumption is an assumption that fixed rules and regulations.

D.M. Shchokin denies the appropriateness of the selection of classification presumptions, considering it arbitrary and pointing out that the actual presumption is outside the scope of law has absolutely no value and are harmful to law [2, p.61]. In this regard, the situation needs to be clarified M.S. Strogovich, who noted that the actual presumption in nature no presumption or circumstantial evidence does not appear, because they contain rough generalization, which always require verification through evidence. No natural presumptions, which are generally governed by the court in determining the facts of the case does not exist, right to exist in the criminal process they have. The actual presumption is a rule, but not legal, not binding on the judge moral certainty [3, p.185].

The opposite opinion follows O.A. Kuznetsova, who notes that the factual presumption of legislators used as the basis for the emergence of legal norms. However, enforcement activities, as well as any other mental activity, can not use the actual presumption [4, p.102-103]. The validity of using actual presumptions in criminal proceedings is justified by L.M. Vasilyev, which determines the actual

presumption made as socio-historical practice of human history and the development of reliable knowledge about nature, society and judgment, consciously used by the investigator and judge primarily in the form of deductive thought movement to investigate the circumstances necessary for the administration of justice in a criminal case in strict according to law [5, p. 99].

Of course, the actual presumption is not enshrined in law and is not binding because it is legal judgments experience. However, we can not agree that the actual presumptions are illegal, since, firstly, it is necessary to distinguish between the form and content of the presumption and, secondly, the actual presumption can not be equated with hypotheses and versions used in the proof in criminal cases.

Practice the person conducting the inquiry, the investigator, prosecutor and judge is not possible without using actual presumptions, which, according to N. Zhohina, can meaningfully and purposefully select the necessary practical material, after it evaluated correctly outline hypotheses for further research [6, s.363].

A.V. Fedotov factual presumption of shared into two types: 1) Search for the actual presumption, 2) estimates the actual presumption [7, p.87, 8, p.48]. In addition, Dr. Babaev factual presumption share on: 1) the presumption that split and reflect the usual order relations, regardless of the law, but find their application in forensic practice, and 2) the presumption that formed in connection with law enforcement activities [9, p. 44-45].

Particular attention should be paid to the use of presumptions in proving actual known facts. Known facts are derived from evidence such assumptions are refuted in some cases. For example, the presence of snow that had just fallen, the presence of a lighting and other situations may be possible and that a particular person or that the circumstances of the crime seen better. A special group known facts integrates historical, geographical, climatic and other conditions that are commonly known to the public.

The legal presumption - a presumption which formed in everyday life, enshrined in the law and has legal significance. Examples of such presumptions of paternity presumption is enshrined norms of family law. Life experience has established the rule that there is every reason to believe the child's father person before birth lived together with his mother and led her common household. This suggestion was accepted by legislature and received statutory.

Given the foregoing, the classification of presumptions of the legal and factual is justified because it reflects their values and meaning in criminal proceedings Ukraine.

In the scope of presumptions in law are divided into general law, intersectoral and sectoral. Presumptions extended to the specific institutions and law, a few industries or law in general.

Intra presumption spread its effect on several areas of law. V.K. Babaev and V. Morkvin note that the relations which are subject to the presumption should be in this case is similar and cite as an example the presumption of guilt tort injurer who acts in civil and labour law [9, p. 58, 10, p.15].

Presumptions that operate only in a particular area of law called industry. They are formed based on a specific field of public relations, acting subject to regulation by law and have the opposite effect on its formation.

Where possible rebuttal of the presumption can be rebutted and classified into compelling. As pointed out by V.I. Kaminska, rebuttable presumption (praesumptiones juris**)** - a presumption in respect of which allowed the possibility of refutation, it being a rough generalization, necessarily implies exclusion. Irrefutable presumption (praesumptiones juris et de jure) - a presumption rebuttal which is not allowed. It distributes its effect on all occasions, despite the fact that among the generalized cases it inevitably there are those who deliberately do not match what it says [11, p.51]. According to Dr. Babaev and A.A .Krymova, usually fixed irrefutable presumption recognizes true and can not be refuted [9, p.46, 12, p. 69].

I.B. Lowenthal believes that specific feature rebuttable legal presumptions is their ability in most cases to indicate not only what to whom a duty of rebuttal, but his methods [13, p.60].

Special attention should be paid attention to the classification of legal presumptions proposed A.V. Fedotov, who shares the legal presumption of two types: rebuttable and compelling, each of which, in turn, is divided into two subspecies: the presumption of general and specific [8, p.48-49]. In this case, there is a combination of the two criteria for the classification of these legal phenomena: the scope of presumptions and the possibility of refutation, that allows to learn more about the effects of various kinds of presumptions in practice.

Legal values irrefutable presumptions is that they primarily serve the public interest and dictated by the needs of the investigation and litigation. The number of such situations is limited by the legislator and installed for maximum protection of human rights.

Analysis of legal rules and practical activities forensic investigators clearly indicate that the legal presumption in criminal proceedings and have substantive and procedural values. Making an attempt to resolve the issue on the basis of such classification, V.I. Kaminska notes that the rebuttable presumption should be attributed to procedural rules and compelling - to the substantive law and procedural proposes to refer to only those presumptions that have content recognition of any circumstances [11, p.50]. However, it is unlikely the proposed criteria reflect the procedural and substantive law, and therefore the position shown, I.A. Libusom and V.A. Oyhenzihtom was subjected to severe criticism [13, p.59, 1, p.25].

All the above positions reasonably criticized V.K. Babaev, who noted that the demarcation presumptions on substantive and procedural want to go out, primarily on the grounds of separation of branches of the right to substantive and procedural performance and role of presumptions [9, p.49-54]. A similar view expressed L.A. Astemirov and A.A. Krymov, indicating that it is necessary to distinguish between criminal and procedural presumption, citing as an example the presumption of innocence [14, p.10, 12, p.75].

In legal literature, there is no unity of opinion concerning the nature of substantive and procedural presumption. Yes, V.A. Oyhenziht indicates that procedural rules may follow from substantive law, even those who laid the substantive presumption. However, in this case, they are not identical but different presumption because it is not a presumption different aspects and different sides of the same rules that led to the emergence of two different presumptions [1, p.28]. This opinion is shared by E.Y. Vedenyeyev that offers similar legal presumption

presumption call one complex [15, p.44]. Obviously, this view these scientists too complicated area of legal presumptions and makes it difficult to understand.

However, to address the nature of the relationship substantive and procedural presumptions, it is correct to recognize the opinion of Dr. Babaev that no assumptions in the presence of substantive law, would not have procedural matter, but there is speculation that have just mentioned procedure [9, p.57]. Procedural meaning presumption in legal literature usually not objectionable. As the V.D. Arsenyev, facts presumption in substantive law, not be proved in the process [16, p.99]. That is, any presumption affects the distribution obligation of proof, but the latter is not a legal presumption, and above all, the conclusion to be drawn from it, and not always obvious and not always necessary. We agree with the opinion of Gurvich that presumption eases the burden of proof and is a way of relief from it [17, p.9]. At the same time, the substantive aspect of the presumption is to establish a legal fact that affects the content material relationship. Due to the action of substantive presumptions members of this relationship, as appropriate, must recognize the presumptive fact and accordingly build their future behaviour. This ensures the ordering of social relations. Named property allows substantive presumption regulate very complex group of social relations.

Therefore, it is necessary to consider the correct classification of presumptions on substantive and procedural depending on their attachment to material or procedural law, but given their importance in the legal regulation.

Special attention in the implementation of classification of legal presumptions should be given to their division into direct and indirect, as the basis of such a classification is a form of legal consolidation. Direct presumption expressly provided legal norms. As the VP Fennych often in these rules can be found expressions such as "until proven otherwise", "is", "unless he proves", "assumes", etc. [18, s.427]. An example of direct fastening serve as the presumption of innocence (part 1 of article 62. Constitution of Ukraine) and the presumption of validity of the verdict, which came into force (Article 323 CPC **of** Ukraine). Indirect presumption is believed to V.K. Babaev and V.A. Oyhenziht - it's such a presumption where presumptive provisions are not directly taught in the law, but it can be derived by inference [9, p.17, 1, p.42]. E.Y. Vedenyeyev pointed to the increase in indirect presumptions in modern law [15, p.46]. V.I. Kaminska, formulating a definition of presumption notes that the presumption can be expressed in the law directly or indirectly [11, p.3]. However, this classification presumptions are not widespread in the legal literature, and as a consequence, are of direct and indirect presumption hardly regarded scientists.

Characteristic of all research relating to indirect presumptions is that in most cases, scientists are not criteria for identifying implicit presumption in the law in the process of interpretation. It is the absence of a specified criterion A.A. Kuznetsova connects instability problem most indirect presumptions that generates them unstable system [19, p.108]. In this respect, it is worth paying attention to individual cases to establish clear criteria for identifying implicit presumptions. So, V.K. Babaev said that the indirect fixing of presumptions in the hypothesis of Law enshrined presumption of fact, but the presumption fact it does not appear [9, p.18]. Among the indirect presumptions V.A**.** Oyhenziht provides so-called "hidden (latent) presumption," in which the consolidation of rule of law there is no indication of the

distribution of the obligation of **proof** (e.g. the presumption of good faith purchaser way) [1, p.42].

In case of indirect presumptions must be based on the fact that the rule of law contains a reference only presumption fact and evidence-base of this presumption really need to print through the interpretation of the law, which established a presumption fact. That is, in this case, always in the content of the law, which is fixed indirect presumption will be available two kinds of facts: facts, grounds of presumption (non-obvious fact) and presumption fact (obvious fact.) Moreover, it is required logical features of the presumption, without which the latter can not exist, - the existence of a causal connection between the fact and the facts of presumption basis of presumptions. These signs are a minimum number of facts of evidentiary presumptions design that should always be present in the content of legal norms. This pay attention N.S. Karanina and O.A. Kuznetsova, considering the indirect presumptions have the same logical structure as the direct [20, p.99, 19, p.108].

Based on the above, the direct and indirect presumption shall have the right to exist, as they play an important role in the formation of most legal presumptions.

A.A. Krymov justifies the feasibility of classification of legal presumptions into two types: the presumption aimed at promoting human rights, respect for his honour and dignity, and presumption aimed at arriving at the truth in a criminal case [12, p.78]. Supporting the feasibility of such a classification, it should be noted that the first group should include the presumption of innocence, the presumption of prejudice person inquirer, investigator, prosecutor and judge who challenged, and so on. The second group includes a rebuttable presumption compelling and affecting the admissibility of evidence. Irrefutable presumption based on the fact that if not complied with the procedural rules of evidence, in this case, the result of evidence has absolutely no value. Such presumption reflected in the form of unconditional grounds for nullity and certain rules of admissibility of evidence. If you made less serious violations, it shall enter into force rebuttable presumption procedure. For legal presumptions of this kind should include the rule enshrined in Art. 76 Code of Ukraine, the mandatory examination. If the specified investigative action is not carried out, then the fact is not installed.

Additionally, another classification of legal presumptions that merit is their separation depending on the validity of normative legal act in which they are contained. Thus, given the structural and hierarchical criterion legislation N.S. Karanina provides international legal, constitutional, are contained in the laws and regulations of regulatory legal acts and local presumption [20, p. 72].

Thus, on the basis of the above mentioned, the legal presumption can be classified according to the following reasons: 1) the fact of legal consolidation - factual and legal presumptions; 2) the scope – general and legal, intersectoral and sectoral presumptions; 3) the possibility refutation – refutable and irrefutable presumptions; 4) depending on the consolidation in the material or procedural law and taking into account the value of legal regulation - material and legal and procedural presumptions; 5) according to the form of legal consolidation - direct and indirect presumptions; 6) according to the direction of act - presumptions aimed at promoting human rights, respect for his/her honour and dignity, and presumptions aimed at achieving the truth; 7) depending on the validity of normative legal act in

which they are - international and legal, constitutional contained in the laws and subordinate normative legal acts and local presumptions.

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