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METHODS OF ASCERTAINING TRUTH IN THE ROMANO-GERMANIC LEGAL FAMILY AND THEIR SIGNIFICANCE FOR THE IMPROVEMENT OF THE LEGISLATION OF UZBEKISTAN

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Abstract: The question of how a court establishes the factual truth of a dispute lies at the heart of every procedural system. Within the Romano-Germanic (continental) legal family, the search for what is traditionally called "material" or "objective" truth has historically been treated not as a by-product of party contest but as an independent goal that the judge is duty-bound to pursue. The article concludes that while Uzbekistan's procedural legislation already rests on a Romano-Germanic epistemological foundation, further modernization - including a clearer statutory definition of the standard of proof, expanded use of digital evidence, and a more precise balance between judicial activism and party autonomy - would strengthen the reliability of fact-finding without abandoning the continental tradition's commitment to substantive justice.

Keywords: Romano-Germanic legal family, material truth, evaluation of evidence, civil procedure, criminal procedure, judicial reform, Uzbekistan, comparative law.

Introduction. Every legal system that adjudicates disputes must answer a deceptively simple question: how does a court come to know what actually happened? The answer given to this question shapes the rules of evidence, the powers of the judge, the rights of the parties, and ultimately the legitimacy of the judgment itself. Two broad philosophical traditions have historically diverged on this point. The Anglo-American, common-law tradition tends to treat truth as an emergent property of a contest between two parties, each presenting the strongest possible case before a relatively passive adjudicator; the result is sometimes described as a "formal" or "procedural" truth, arrived at through the clash of adversarial argument rather than through an independent judicial inquiry. The Romano-Germanic, or continental, legal family has historically taken a different view. Rooted in Roman law, refined through the medieval *ius commune*, reorganized by the French codification of 1804 and systematized by nineteenth-century German legal science, the continental tradition has generally regarded the court not merely as an arbiter of competing narratives but as an active participant in the search for what actually occurred - a standard often labelled "material" or "objective" truth.

The historical roots of this divergence deserve brief attention, since they explain why the continental commitment to material truth is not merely a technical evidentiary rule but a foundational feature of the legal culture. Roman-canon procedure, as it developed in the medieval universities of Bologna and Paris and was later absorbed into continental practice through the *ius commune*, displaced the earlier Germanic and Frankish forms of trial by ordeal and formal oath-taking with a

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written, judge-led inquiry into the facts. This inquisitorial inheritance survived the Enlightenment-era codifications - the French *Code de procédure civile* of 1806 and the German *Zivilprozessordnung* of 1877 - not as a relic but as a deliberate choice: both codes rejected the earlier system of formal, statutorily fixed evidentiary weight (in which, for example, the testimony of two witnesses automatically outweighed that of one) in favour of a judge empowered to weigh all evidence freely in pursuit of an accurate reconstruction of events. When the Soviet Union constructed its own procedural codes in the twentieth century, it inherited this continental epistemology through the channel of pre-revolutionary Russian law, itself substantially modelled on German and French codification, and radicalized it into an explicit constitutional-level doctrine of objective truth binding on investigator, prosecutor and court alike. It is this specifically Soviet variant of the broader Romano-Germanic tradition that Uzbekistan inherited at independence, and that continues to shape its procedural codes today.

Materials and Methods. The research draws on primary legislative material - principally the Civil Procedure Code of the Republic of Uzbekistan, the Criminal Procedure Code, the Code of Administrative Court Proceedings, and, for comparative purposes, the German Code of Civil Procedure (*Zivilprozessordnung*, ZPO), the French Code of Civil Procedure (*Code de procédure civile*) and the Code of Criminal Procedure of the Russian Federation - together with the doctrinal literature that has interpreted these instruments. Secondary sources include the foundational comparative-law scholarship of John Henry Merryman, Konrad Zweigert and Hein Kötz, and Mirjan Damaška, alongside the procedural theory developed within Soviet and post-Soviet legal scholarship, in particular the classical doctrine of objective truth associated with Mikhail Strogovich and its later critical reassessment.

Four methods were combined. The comparative-legal method was used to identify structural similarities and divergences between the evidentiary regimes of France, Germany, Russia and Uzbekistan, treating each as an instance of a shared Romano-Germanic epistemological family while remaining attentive to national variation. The historical-legal method traced the doctrinal genealogy of the concept of material truth from Roman-canon inquisitorial procedure through the French and German codifications to its Soviet reformulation, in order to explain why Uzbek legislation still bears the imprint of a specifically Soviet variant of continental procedural theory. The formal-dogmatic (doctrinal) method was applied to the text of the relevant codes themselves, examining the statutory language used to describe the standard and method of evaluating evidence, the powers granted to the court, and the allocation of the burden of proof. Finally, a systemic-functional analysis assessed how individual institutes - free evaluation of evidence, expert examination, judicial questioning, presumptions - interact within the broader procedural architecture to produce (or fail to produce) reliable fact-finding, taking into account publicly available information on the pace and content of Uzbekistan's judicial reform since 2017.

The study is doctrinal and comparative rather than empirical; it does not draw on court statistics or case-by-case outcome data, and its conclusions about practical effect should accordingly be read as hypotheses for future empirical verification rather than as established findings.

Results. 1. The doctrine of material (objective) truth as the epistemological core of the Romano-Germanic tradition. The single most distinctive feature separating the Romano-Germanic approach to fact-finding from its common-law counterpart is the idea that the court itself bears responsibility for ascertaining what actually happened, rather than merely evaluating which of two competing party narratives is more persuasive. This idea traces back to the inquisitorial procedure that

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displaced private accusation in continental Europe from the late Middle Ages onward, and it was given systematic doctrinal expression in nineteenth-century German legal science and in French procedural codification. Under this conception, a judgment is not merely a resolution of a dispute between two private parties; it is also, and primarily, a public act declaring what objectively occurred, and its legitimacy depends on the accuracy of that declaration.

The clearest statutory expression of this idea in the modern continental codes is the principle of free evaluation of evidence (in German, *freie Beweiswürdigung*; in Russian and Uzbek procedural doctrine, *svobodnaya otsenka dokazatelstv* / erkin baholash). Article 286 of the German ZPO instructs the court to decide, according to its free conviction formed from the entirety of the hearing and any evidence taken, whether an allegation of fact is true. Analogous formulations appear throughout the continental family: the court is not bound by any fixed hierarchy of evidentiary weight - such as the medieval rule that required a fixed number of witnesses or that treated a party's own testimony as inherently unreliable - but instead evaluates all evidence according to its inner conviction, formed through a comprehensive, full, objective and direct examination of everything gathered in the case.

Three consequences follow from this doctrine, each of which recurs across the jurisdictions examined. First, no piece of evidence has predetermined, statutorily fixed weight; a notarized document, an expert opinion and a witness statement must all be weighed against one another rather than ranked in advance. Second, the court's conviction must nonetheless be reasoned and externally verifiable: free evaluation is not the same as arbitrary evaluation, and continental codes uniformly require the court to state, in the reasoning section of its judgment, why it accepted some evidence and rejected other evidence. Third, and most significantly, the pursuit of material truth has traditionally justified giving the court itself an active, rather than passive, role in the collection of evidence.

2. The active role of the judge and the limits of inquisitorial initiative. Continental procedure, particularly in its civil-law branch, has never adopted the extreme inquisitorial model in which the judge alone conducts the investigation; private disputes remain, in principle, the parties' own affair, and the parties bear the primary burden of presenting facts and evidence (the so-called *Verhandlungsgrundsatz*, or principle of party presentation, in German doctrine). Yet within this framework, continental judges retain investigative powers that would be unusual in a purely adversarial system: the power to order the production of a document held by a party or a third party, the power to summon and question witnesses on points the court itself considers material even where neither party has raised them, the power to order an expert examination on its own initiative, and, in family, labour and certain administrative matters, a considerably expanded duty to investigate the facts independently of what the parties present (the *Amtsermittlungsgrundsatz*, or principle of official investigation, which in German law governs proceedings before the family courts and much of administrative procedure).

3. Expert examination as an institutionalized method of establishing truth. A second method distinctive of the Romano-Germanic tradition, and closely related to the principle of free evaluation of evidence, is the highly developed, court-controlled institute of expert examination (*Sachverständigengutachten* in German doctrine; *sudebnaya ekspertiza* in the post-Soviet tradition). Where the common-law tradition has historically relied on party-retained expert witnesses subject to cross-examination, continental systems have generally treated the expert as an assistant to the court rather than an advocate for either side: the expert is, in principle, appointed or approved by the court, answers questions framed by the court, and produces a written opinion that becomes part of the case file to be freely evaluated alongside all other evidence. This institutional design reflects the same

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underlying epistemology as free evaluation of evidence: because the goal is an objectively accurate reconstruction of the facts rather than the vindication of one party's version, the specialist knowledge needed to interpret technical, medical, financial or forensic evidence is treated as a resource belonging to the process as a whole rather than to either litigant.

At the same time, the broader judicial-legal reform program launched from 2017 onward has introduced institutional and procedural changes that sit somewhat uneasily alongside the inherited doctrine of objective truth: the digitalization of court proceedings through the "Elektron sud" information system, which changes how evidence is submitted, stored and examined; the expansion of mediation as an alternative, party-driven mechanism for resolving disputes without any judicial fact-finding at all; the strengthening of the advocacy profession and the introduction of stronger guarantees for the equality of arms between prosecution and defence in criminal matters; and a general reform rhetoric that emphasizes procedural efficiency, reduced caseloads and international standards of a fair trial, values historically more closely associated with adversarial than with inquisitorial procedure. The result, this article suggests, is a legislative framework that remains doctrinally continental in its core evidentiary architecture, but that is being pulled, unevenly and without full theoretical reconciliation, toward a more mixed model.

Discussion. The comparative material assembled above suggests areas in which the further improvement of Uzbek legislation could draw productively on Romano-Germanic experience while addressing tensions already visible within the existing framework.

The first concerns the standard of proof. Uzbek codes, like most continental codes, instruct the court to decide according to its inner conviction formed through comprehensive and objective examination of the evidence, but they do not define, in statutory terms, what degree of certainty that conviction must reach before a fact can be treated as established, nor do they differentiate explicitly, as some jurisdictions increasingly do, between the civil standard applicable to private disputes and the substantially higher standard properly required before a criminal conviction. Legislative clarification of this threshold - whether through an explicit statutory formula or through binding guidance from the Supreme Court - would reduce inconsistency across courts and provide a clearer benchmark against which appellate review of factual findings could be conducted, without requiring Uzbekistan to abandon the continental preference for a unified, holistic evaluation of evidence over a common-law-style enumeration of discrete admissibility rules.

The second concerns the relationship between the court's active investigative role and the principle of party autonomy, particularly in civil and commercial litigation. The continental tradition itself has moved, over the past half-century, toward a more differentiated allocation of investigative responsibility: German civil procedure retains strong party presentation as the default rule precisely because private civil disputes are considered the parties' own affair, reserving the more expansive official-investigation principle for matters - family law, administrative law, certain aspects of labour law - where structural inequality between the parties, or a public interest extending beyond the individual dispute, justifies greater judicial initiative. Uzbek civil procedure, by contrast, still frames the court's fact-finding duty in relatively uniform terms across the generality of civil disputes. A more differentiated approach - preserving robust judicial initiative in administrative, family, labour and consumer-protection matters, where a structural imbalance between the parties mirrors the concerns that historically justified the Romano-Germanic tradition's inquisitorial elements, while allowing greater party control over the scope of the factual inquiry in ordinary commercial litigation between

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represented parties - would bring Uzbek legislation closer to the more refined contemporary continental model and could contribute to reducing court caseloads without sacrificing protection in the areas where it is most needed.

Finally, it is worth noting a structural tension that this article has not attempted to resolve but that further research should address directly: the continued statutory language of comprehensive, full and objective investigation, inherited from Soviet doctrine, coexists in Uzbek legislation with reform measures that presuppose a more adversarial division of labour between the parties and the court. Reconciling these two strands - deciding, as a matter of legislative policy, how far the search for material truth should remain a duty of the court itself and how far it should be redistributed to the parties and their advocates - is arguably the central unresolved question facing the next stage of Uzbekistan's procedural reform. The Romano-Germanic tradition offers no single settled answer to this question, since its own constituent national systems have resolved it differently; but the comparative experience of Germany's differentiated allocation of investigative responsibility, and of Russia's deliberate abandonment of the objective-truth formula in criminal procedure while retaining it in more attenuated form elsewhere, suggests that a deliberate, differentiated legislative choice - rather than the continuation of a uniform inherited formula across all categories of dispute - is likely to serve Uzbekistan's reform goals better than either wholesale retention or wholesale abandonment of the inquisitorial legacy.

Conclusion. The Romano-Germanic legal family has developed, over the course of two centuries of codification and doctrinal refinement, a distinctive and internally coherent set of methods for establishing the truth of contested facts: free evaluation of evidence unconstrained by a fixed hierarchy of proof, an active - though not unlimited - investigative role for the court, an institutionalized and nominally neutral form of expert examination, and a body of presumptions and burden-of-proof rules that allocate the residual risk of factual uncertainty. Uzbekistan's procedural legislation, as an heir to this tradition through its Soviet-era predecessor codes, already embodies each of these methods in substance. The country's post-2017 judicial reforms have begun to introduce complementary, more adversarial elements - strengthened defence rights, digitalized proceedings, expanded mediation - without yet fully reconciling them with the inherited doctrine of comprehensive, objective investigation. Bringing Uzbek legislation into closer alignment with the more differentiated, contemporary variants of the Romano-Germanic tradition - through a clearer statutory standard of proof, a more differentiated allocation of investigative responsibility between court and parties depending on the category of dispute, and more detailed rules governing expert examination and digital evidence - would strengthen the reliability of judicial fact-finding while preserving the continental commitment to substantive, rather than merely formal, justice that has defined Uzbekistan's legal system since its foundation.

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