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Illegal Evidence in Criminal Proceedings: Collecting of Evidence by Authorized Officials of Internal Affairs Bodies

Katarina S. Živanović[1]
Ministry of Interior of the Republic of Serbia, Belgrade, Serbia

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Abstract: The subject of the research is a theoretical, normative and practical analysis of illegal evidence in Serbian law and judicial practice, with a special emphasis on the manner of behaviour of authorized officials of internal affairs bodies, which during the conducting of evidentiary actions can cause the illegality of the obtained evidence. The goal of the research is reflected in the scientific and practical contribution to the scientific and social community, since in addition to the presentation and analysis of prominent scientific and theoretical concepts represented in domestic and foreign literature, the paper contains a detailed presentation of the results of the analysis of domestic courts decisions, but also the decisions of the European Court of Human Rights (ECtHR) in terms of violation of the right to a fair trial (Art. 6 of European Convention on Human Rights). The analysis of the aforementioned court decisions is extremely important, bearing in mind that the institute of illegal evidence de facto represents court standards. Namely, through the analysis of ECtHR decisions, it was established that the court assesses the legality of evidence in light of the violation of the right to a fair trial, in terms of the method of obtaining evidence, causes the unfairness of the procedure (as a whole). By analysing the domestic court practise, it was established in which cases the police collected evidence in an illegal manner, that is, in which cases the evidence was collected in a legal manner.

Keywords: illegal evidence, European Court of Human Rights, prohibition of torture, jurisprudence of domestic courts, interrogation of the suspect, crime scene investigation, temporary confiscation of items, search.

INTRODUCTION

The issue of legality of evidence is a very complex criminal procedure institute of modern criminal procedure systems. The complexity of the above-mentioned issue stems from the fact that by prescribing rules on (il)legal evidence, a balance must be established between the conflicting goals of a legal, democratic state, that is, a balance of conflicting principles on which the criminal procedure itself rests. It is about effective criminal prosecution and punishment of the perpetrator, on the one hand, and protection of basic human rights, on the other hand.

1 Corresponding author: kaca_zivanovic@yahoo.com • https://orcid.org/0000-0002-8345-5320

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Namely, as pointed out by the European Court of Human Rights (hereinafter: ECtHR) in the decision *Šečić v. Republic of Croatia*, it is the duty of the state to find a balance between the protection of fundamental rights of citizens and the right of defence, on the one hand, and consistently fulfilling its obligation to effectively prosecute and punish perpetrators of criminal offenses, on the other hand (Carić, 2010: 840–841). In this way, by standardizing the institute of illegal evidence, the principle of the rule of law is implemented, which ensures respect for the prohibitions regulated by the Constitution and the law, as well as the guaranteed human rights and freedoms, which prevents the arbitrary actions of public authorities, that is, which prevents the state from using criminal methods when confronting and crime suppression (Živanović, 2018: 289, 2020: 160). As a result, the decision that the unlimited use of evidence to establish the facts cannot be justified even to find out the truth is completely understandable and acceptable (Pisarić, 2010: 365). As Vasiljević (1981: 305) points out, no matter how important the determination of the factual situation is, it cannot be determined by any means of evidence, i.e. society at a certain level of culture does not want to accept the truth established in a procedure contrary to social and moral standards. In this sense, only evidence obtained in compliance with constitutional and legal provisions can be used in criminal proceedings, i.e. provisions on conducting the evidentiary actions as well as provisions guaranteeing human rights.

In order to continue talking about illegal evidence, it is first necessary to point out the conceptual definition of evidence, that is, illegal evidence. Namely, the legal definition of the concept of evidence is not immanent in criminal procedural legislation, but rather their definition is done doctrinally. As Škulić (2013: 185) points out, it is not a question of the legislator's omission, since in practice, based on basic theoretical concepts, an understanding of what evidence is in a specific case and its evidentiary credibility is built. In this sense, judicial practice is recognized as one of the most significant sources that has an evident contribution and influence in the area of creation and development of the *de facto* illegal evidence system. However, the legislator did not completely leave the issue of the development of the system of illegal evidence to the courts. In this sense, as pointed out by Bugarski (2014: 15) and Carić (2010: 840), the legislator set certain limitations before the courts, bearing in mind the minimum standards established at the national and international level in the area of evidentiary prohibitions, which primarily represent a barrier to violations of fundamental human rights.

In the doctrine, illegal evidence is defined as "evidence which, due to a violation of the procedural form, which at the same time represents a violation of fundamental human rights, may not be used to render a verdict in a criminal proceeding" (Bojanić & Đurđević, 2008: 974). As pointed out by G. P. Ilić (2015: 86) illegal evidence is generally defined in the doctrine as evidence that in content or form represents a violation of basic human rights and cannot be used to draw conclusions about the facts established in criminal proceedings. In principle, I. Ilić (2015: 153) correctly states that the prescription of all evidentiary prohibitions is carried out with the aim of protecting the basic freedoms and rights of the participants in the proceedings, as well as respecting the defendant's right to defence.

In this sense, as stated by Stevanović and Đurđić, the postulates of the rule of law mandate the self-limitation of state bodies when undertaking procedural actions, i.e. evidence must be derived exclusively from the means of evidence prescribed by law, and in the manner prescribed by law (I. Ilić, 2015: 152). As one of the key authorities whose actions can cause

the illegality of evidence, the internal affairs authorities (police) stand out, which were authorized by the legislator to take certain measures in the pre-investigation procedure (Art. 286 of the CPC) and to take evidentiary actions (Art. 287, paragraphs 1 and 2 of the CPC).

The legislator pointed out the importance of respecting the legal rules that regulate the conducting of evidentiary actions in the provision of Art. 287, para. 2 of the CPC, according to which it is stipulated that the evidence obtained by the police in the pre-investigation procedure can "be used further in the criminal procedure, if the evidentiary actions were carried out in accordance with this code". From the aforementioned legal provisions, it is clear that the police, by taking measures and actions based on the law, contribute to the achievement of the goal of criminal proceedings. The effectiveness of the legal norm that guarantees human rights and freedoms, and therefore the effectiveness of the rules on illegal evidence, was ensured by the legislator with incriminations such as Abuse and Torture from Art. 137, and Extortion of Statements from Art. 136 of the Criminal Code of the Republic of Serbia.

ILLEGAL EVIDENCE ACCORDING TO THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF SERBIA

The Constitution of the Republic of Serbia (2006) does not have explicit provisions on illegal evidence,[2] so the regulation of the system of illegal evidence is left to the legislator. In this sense, regarding the determination of illegal evidence, the legislator stipulates that illegal evidence cannot be used in criminal proceedings, providing that illegal evidence is the evidence obtained contrary to Art. 16, para. 1, (Art. 84, para. 1 of the CPC), i.e. that evidence that "directly or indirectly, by itself or according to the method of obtaining it, is contrary to the Constitution, this Code, other laws or generally accepted rules of international law and ratified international treaties" (Art. 16 of the CPC). Bearing in mind the above, and as pointed out by the Supreme Court of Cassation (2022a), CPC does not prescribe that the illegality of evidence can be caused if the evidence is in contradiction with the by-law, that is, it does not prescribe the impossibility of basing a court decision on evidence that is in contradiction with the by-law.

The logical consequence of the illegality of the evidence, according to the provisions of Art. 84 of the CPC, is the impossibility of using them in criminal proceedings. The legislator emphasized the importance of respecting the provisions on illegal evidence, and thus the realization of the principles of legality and fairness as fundamental postulates of the criminal procedure, by standardizing the relatively important procedural violation of basing the judgment on illegal evidence as a reason for appeal (Art. 438, paragraph 2, item 1 CPC). However, unlike the earlier legal solution, it is a violation, which, if the court finds that it exists, does not automatically result in the annulment of the decision, but in each specific case the court determines the impact of this violation on the legality and regulari-

2 Despite the fact that the Constitution does not prescribe direct rules regulating the area of evidentiary prohibitions, by interpreting the constitutional provisions, it is noted that the framer of the Constitution entered this area by standardizing certain prohibitions during the actions of public authorities, such as: the prohibition of violence and extortion of statements from persons deprived of their liberty, with respect for their personality and human dignity (Art. 28 of the Constitution), i.e. by proclaiming certain rights, such as: inviolability of the apartment (Art. 41 of the Constitution), confidentiality of letters and other means of communication (Art. 67 of the Constitution).

ty of the decision. In addition to the above, the relativization of the mentioned procedural violation was also done by the legislator's decision to foresee that it exists "if the judgment is based on evidence on which, according to the provisions of this code, it cannot be based, unless, considering other evidence, it is obvious that even without of that evidence, the same judgment was passed" (Art. 438, para. 2, subpara. 1 of the CPC).

In accordance with the legal definition of illegal evidence from Art. 16 of the CPC, it follows that illegal evidence is evidence that is 1) *in itself (essentially)*, or by their content, or 2) *by the manner in which it was obtained*, in contradiction to the legal order and standards of human rights in criminal proceedings, which primarily include irrational *means of evidence* (for example, as is the case with persons who do not have direct knowledge of the event itself or, say, the witness's assumption that the defendant committed a criminal offense) (Ilić *et al*., 2013: 270); then, the illegality of the evidence may be the consequence. In this case, it is necessary to make a distinction between evidence that: a) directly according to the method of obtaining is contrary to the Constitution, the Code, other laws and standards of human rights in criminal proceedings, or which b) indirectly according to the method of obtaining is contrary to the Constitution, the Code, other laws and standards of human rights in criminal proceedings. In the first case, the legislator expressly prescribed that a court decision cannot be based on certain evidence, such as, for example, the testimony of the defendant (Art. 85, para. 5 of the CPC) or the witness (Art. 95, para. 4 of the CPC) whose testimony was obtained when one of the listed violations was committed. In contrast to the aforementioned absolute illegality of evidence, one can also talk about the relative illegality of evidence when the court assesses the extent to which the method of obtaining certain evidence is contrary to legal order and standards of human rights in criminal proceedings. In another case, when it comes to the evidence that indirectly according to the method of obtaining is contrary to the Constitution, the Code, other laws and standards of human rights in criminal proceedings, the legislator accepted the "fruits of the poisonous tree" doctrine (Ilić *et al*., 2013: 270–271; G. P. Ilić, 2015: 82–83). It is about the "extended effect that inadmissible evidence has also on admissible evidence which was obtained through inadmissible evidence" (Brkić, 2011: 188). The aforementioned doctrine was established in American judicial practice. The doctrine of "fruit of the poisonous tree" found its initial foothold in the ruling of the US Supreme Court, in the decision *Silverthorne Lumber Company v. United States*, 1920 (Worrall, 2009: 46; Pitler, 1968: 579).

In contrast to the evidence whose illegality results from its content in contradiction with the legal order and standards of human rights in criminal proceedings, as well as evidence whose illegality is caused by the fact that the way of obtaining them is contrary to the Constitution, the Code, other laws and standards of human rights in criminal proceedings directly, with the doctrine "fruits of the poisonous tree", there are certain disagreements in theory and practice.

Referring to the current legal solution, the authors point out that our legislator adopted the "fruits of the poisonous tree" doctrine (Škulić, 2013: 200–201; Bugarski, 2014: 20; Brkić, 2011: 188; Ilić *et al*., 2013: 271; G. P. Ilić, 2015: 83; Stanković, 2022: 196), as well as the fact that our judicial practice has in principle opted for the rigid application of the "fruit of the poisonous tree" doctrine (G. P. Ilić, 2015: 83; Stanković, 2022: 196, 198). When it comes to judicial practice, our courts have taken the position in their specific decisions

that "evidence derived from illegal evidence is also considered illegal" (Supreme Court of Cassation, 2021d), that is, "illegal evidence and evidence that is indirectly based on evidence obtained illegally" (Court of Appeal in Niš, 2015; Court of Appeal in Belgrade, 2020). Specifically, in the aforementioned appellate decisions, as well as in the decisions of the Supreme Court of Cassation (2017) and of the High Court in Čačak (2018) "if the record of the search of the apartment was separated by a final decision as illegal evidence, then the evidence that was obtained is also illegal as a result of the search of the apartment", such as the testimony of police officers (heard as witnesses) about the contents of the record of the search of the defendant's apartment, as well as the certificate of temporarily confiscated items, issued during the search.

However, the "fruits of the poisonous tree" doctrine has been criticized by certain leading authors. For example, Grubač (2002: 296) pointed out that the acceptance of the mentioned doctrine represents "purity" which is obviously excessive and as such is not acceptable for our criminal procedure law, while Vasiljević (1981: 309) pointed out that "the value of illegally obtained evidence cannot be contested just because it was obtained illegally, because facts established beyond doubt cannot be denied". Also, Damaška emphasized criticism from a social-ethical aspect, stating that "a dangerous delinquent remains unpunished, society is unprotected, and the victim's relatives are without satisfaction", while Kobe emphasized that neither the prohibition on the use of evidentiary material, nor the extended effect is justified if it comes to evidence in favour of the defendant (Brkić, 2011: 289). Contrary to the above, Škulić (2013: 201) points out that earlier legal solutions, which were possible to a certain extent to narrow the effect of the evidentiary concept on the "fruits of poisonous trees", were not justified.

Furthermore, in relation to the doctrine of "fruits of the poisonous tree", American jurisprudence established certain exceptions. It is, for example, about the following exceptions:

1) *The "good faith" exception* is used since 1984, when the Supreme Court recognized a "good faith" exception to the exclusionary rule in their decisions *United States v. Leon* and *Massachusetts v. Sheppard*. Namely, court has decided that if the officer has an ulterior motive, this exception does not apply (Hails, 2009: 293), that is the court in *Arizona v. Evans* has held that where the police had acted reasonably and in good faith in relying on a Statute or a warrant, there can be no deterrent reason for excluding the evidence (Schwikkard & Van der Merwe, 2015: 211–212; Hails, 2009: 293–294; Bajović, 2013: 745–746).
2) *The "independent source" exception* provides the acceptance the evidence under the independent source exception, so that the prosecution must convince the judge that the police discovered the evidence without relying on unconstitutional procedures. This was established in the Supreme Court decisions *Segura v. United States* and *Murray v. United States* (Hails, 2009: 295; Schwikkard & Van der Merwe, 2015: 211–212; Obradović & Župan, 2011: 118).
3) *The "stop and frisk" exception* implies that real evidence obtained during a so-called "stop and frisk" is admissible despite the fact that such conduct does, strictly speaking, fall short of the requirements set by the Fourth Amendment (Schwikkard & Van der Merwe, 2015: 211–212).

4) *The "public safety" exception* is based on the idea that the police are justified in acting to protect the public from immediate danger, even if it is necessary to violate someone's constitutional rights to do so. This was established in the Supreme Court decision *New York v. Quarles* (Hails, 2009: 296; Schwikkard & Van der Merwe, 2015: 215–216).
5) *The „inevitable discovery"exception* to the exclusionary rule was created in *Nix v. Williams*, and it is based on the idea that the police would have found the evidence even if they had not used unconstitutional procedures (Hails, 2009: 294–295; Schwikkard & Van der Merwe, 2015: 215–216), etc.

Bearing in mind the mentioned exceptions, the authors Martinović and Kos (2016: 334), in whose country the CPC accepted this doctrine, believe that in the context of the further development of Croatian criminal procedural law, the relativization of the prohibition of the "fruits of the poisonous tree" is imposed as a possible solution.

Furthermore, the European Court of Human Rights, in the decision *Gäfgen v. Germany*, referring to certain exceptions to the exclusion of evidence (such as inevitable discovery), refused to apply the "fruits of the poisonous tree" doctrine to evidence resulting from a violation of Article 3 of the Convention (Bojanić & Đurđević, 2008: 980). In this sense, Stanković (2022: 198) points out that the main advantage of this approach is the absolute protection of the defendant's rights, but, on the other hand, in some situations, it is useful to determine whether there is a direct connection between illegal and circumstantial evidence, or whether the circumstantial evidence would have been discovered even without the original illegal evidence, instead of judicial practice, if necessary, not separating the evidence, relying on the question "whether the judgment would have been passed even without that evidence". Namely, Keane and McKeown (2011: 54) state that the middle solution is the best solution, according to which evidence obtained by illegal or unfair means can be excluded if it would have such an impact on the fairness of the procedure that the court should not accept it.

STANDARDS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Despite the fact that the European Convention on Human Rights (ECHR) does not contain specific provisions on the institution of illegal evidence, support for compliance with standardized evidentiary rules at the national level is embodied by the proclamation of certain prohibitions, i.e. certain rights, such as the absolute prohibition of torture from Art. 3 of the ECHR as fundamental values of a democratic society, i.e. on rights such as the right to respect for private and family life (Art. 8 ECHR), and therefore the right to a fair trial (Art. 6 ECHR). Bringing to life the protection of proclaimed rights and prohibitions is ensured by the decisions of the European Court of Human Rights (ECtHR) as an efficient regional judicial mechanism for the protection of human rights and freedoms. However, the ECtHR does not assess the legality of the evidence *per se*, but rather in light of the violation of the right to a fair trial, which in the corpus of guaranteed rights represents the basic assumption of the rule of law. In this sense, the ECtHR does not evaluate whether according to the provisions of domestic law certain evidence is legal or not, but determines whether certain evidence was obtained in a way that violated the convention

rights, and then evaluates the contribution of the committed violation to the violation of the right to a fair trial (*Klaas v. Germany,* par. 29; *Jasar v. the former Yugoslav Republic of Macedonia,* par. 49; *Gäfgen v. Germany,* par. 93; *Khan v. the United Kingdom*, par. 34; *Dragojević v. Croatia*, par. 127; *Moreira Ferreira v. Portugal*, par. 83).

When determining whether it is a violation of the convention prohibition from Art. 3 of the ECHR, there was a violation of the right to a fair trial from Art. 6 of the ECtHR, the ECtHR adopted different standards, viewed from the aspect of whether it is personal or material evidence obtained in that way. In this sense, obtaining personal evidence through torture, inhuman or degrading treatment automatically renders the proceedings completely unfair. However, in the way of obtaining material evidence, the procedure is unfair as a whole if it was obtained by torture, *a contrario*, if the material evidence was obtained by the national authorities through inhuman or degrading treatment, then the court appreciates the impact of such obtained evidence on the fairness of the procedure as a whole (Skorupka, 2021: 112). The aforementioned difference in the evaluation of the contribution of a certain type of evidence obtained contrary to the law, to the violation of the right to a fair trial, is based primarily on the court's assessment of the importance of the legal obtaining of personal evidence for the entire international community. Namely, as the ECtHR established in the decision *Ibrahim and Others v. The United Kingdom* (para. 266) "the right to remain silent during police questioning and the privilege against self-incrimination are generally recognized international standards that lie at the heart of the notion of a fair procedure under Art. 6". In accordance with the above, the use as evidence of the statements of the accused, which were obtained by the local police authorities by acting contrary to Art. 3 of the ECHR, always leads to a violation of the right to a fair trial from Art. 6 of the ECHR, regardless of whether the treatment during which the contested statement was obtained in the specific case is appointed as torture, inhuman or degrading treatment.

In this sense, as the ECtHR points out in the decision *Gäfgen v. Germany* (par. 166–167), the use of evidence obtained contrary to the convention prohibition of torture from Art. 3, "regardless of its probative value and regardless of whether its use was decisive in securing the defendant's conviction – it makes the proceedings as a whole automatically unfair". Therefore, if the domestic authorities obtained evidence through torture, such evidence cannot be considered admissible in any case, even if it does not have a decisive or key role in the argumentation against the accused (*Yusuf Gezer v. Turquie*, par. 40–45), that is, for establishing a violation of the convention prohibition from Art. 3 and thus the violation of the fairness of the proceedings as a whole, it is enough for the ECtHR to establish that certain facts in the proceedings were established on the basis of statements obtained through torture (*Göçmen v. Turquie*, para. 43). With the positions taken, the ECHR confirms the absolute character of the prohibition of torture, which must be respected without exception, even those established by the ECHR, that is, regardless of the behaviour of the person in question even in the most difficult circumstances (*Chahal v. the United Kingdom,* par. 79; *Labita v. Italy*, para. 119) as well as regardless of the nature of the act committed (*V. v. the United Kingdom*, para. 69; *Ramirez Sanchez v. France*, para. 116; *Saadi v. Italy*, para. 127), that is, regardless of the behaviour of the victim and the motivation of the authorities, even in the case of a public danger that threatens the survival of the nation (*Gäfgen v. Germany*, para. 107).

It is also important to point out the position of the ECtHR, by which the court indicates that evidence obtained as a result of police incitement must be excluded, in order to ensure the implementation of a fair procedure. Namely, as the court established in the decision *Ramanauskas v. Lithuania* that "where an accused asserts that he was incited to commit an offence, the criminal courts must carry out a careful examination of the material in the file, since for the trial to be fair within the meaning of Art. 6 of the ECHR, all evidence obtained as a result of police incitement must be excluded. This is especially true where the police operation took place without a sufficient legal framework or adequate safeguards" (Skorupka, 2021: 112).

When it comes to the violation of another convention right, such as the right to respect for private and family life from Art. 8, the ECtHR took a different position in relation to the consequences of violating the prohibition of torture from Art. 3 of ECHR. Namely, as the ECtHR established in the decisions of *Khan v. the United Kingdom* (para. 34–40) and *Bykov v. Russia* (para. 94–105), domestic courts' reliance on evidence obtained in violation of Art. 8 does not necessarily have a negative impact on the fairness of proceedings under Art. 6 (Vitkauskas & Dikov, 2018: 113; *Dragojević v. Croatia*, para. 127–135; *Khodorkovskiy and Lebedev v. Russia*, para. 699–705; *Lysyuk v. Ukrain*, para. 61–76). According to the above, the central issue in this case is the evaluation of the fairness of the specific procedure as a whole, which may result in the diversity of court practice.

EVIDENCE COLLECTED BY AUTHORIZED OFFICIALS OF THE INTERNAL AFFAIRS BODIES – JURISPRUDENCE OF DOMESTIC COURTS

Bearing in mind that the institute of illegal evidence *de facto* represents judicial standards, and due to the lack of normative definition of the concept of evidence, i.e. the concept of illegal evidence, it is extremely important to point out in which cases the court assessed the evidence obtained by the police as illegal. In this sense, the following text will present the decisions, that is, the positions taken in them by the domestic courts, in connection with the undertaking of certain evidentiary actions by the police conducted by non-compliance with the prescribed procedural assumptions for the collection of evidence. Also, with the aim of better understanding, cases were presented in which the court established that the police, contrary to the claims of the applicant for legal remedy, did not act contrary to the legal norm when collecting evidence. These are the following evidentiary actions: hearing the defendant (Art. 85–90 CPC), crime scene investigation (Art. 133–136 CPC), temporary confiscation of items (Art. 147–151 CPC) and search (Art. 152–160 CPC).

Hearing of the Defendant (Art. 85–90 CPC)

The hearing of the defendant is an evidentiary action that can be undertaken by authorized officials of the internal affairs body, before which the legal conditions and procedural rules for the conducting of the said evidentiary action are set as imperative, and which, on the other hand, represent the guarantor of the right to defence. Acting contrary to the standard conditions and rules of hearing the defendant, may lead to obtaining illegal evidence, that is, evidence that cannot be used in criminal proceedings and on which, con-

sequently, a court decision cannot be based. According to the above, and bearing in mind that, as Živanović (2020: 165) points out, "the contribution of the police to establishing the truth from the initial stages of the criminal procedure can be of great importance, bearing in mind that the police, as an authority of the pre-investigation procedure, can in relation to the suspect, take actions whose result can have probative value in the case of conditions fulfilled by law", it is important to point out the cases in which the court found that during the interrogation of the defendant, the police made a certain omission, i.e. acted contrary to the legal provisions that prescribe the conditions and rules for undertaking the said evidentiary actions.

As established in court practice, evidence is illegal if the hearing of the defendant was conducted without the presence of a defence attorney against the law (Court of Appeal in Belgrade, 2019); if the defendant's explicit statement regarding the engagement of a defence attorney was not entered into the record, with a warning that, if it is a matter of mandatory defence, the defence attorney will be appointed *ex officio* (Court of Appeal in Novi Sad, 2019); if the procedural authorities acted contrary to the provision of Art. 68 of the CPC, that is, if the defendant was not informed of the rights prescribed by law; if, during the taking of statements by the defendant and other persons, the official persons by their actions entered the zone of incriminated behaviour (extortion of statements – Art. 136 and abuse and torture – Art. 137 of the Criminal Code).

On the other hand, those pieces of evidence in relation to which there are slight "formal defects", i.e. defects that do not make such evidence illegal, are not illegal evidence. Thus, the court established that the hearing of the defendant is not illegal if the defence attorney is provided, that is, if the defence attorney was present at the hearing of the defendant before the internal affairs authority, but an omission of a formal nature was made since no decision was made on the appointment of a defence attorney according to official duty (Ćetenović & Blanuša, 2017: 197). Also, when it comes to the record of the interrogation of the defendant, which was made by the internal affairs authorities, its credibility and legality will not be questioned, even though not all sides of the record are signed, and bearing in mind that at the end of the record there are the signatures of the defendant and his defence attorney (Court of Appeal in Novi Sad, 2018). As Živanović (2022) points out, the legality of such evidence can be questioned, and it would not be possible to unconditionally assume that such a record is legal, bearing in mind that the signature only at the end of the record of the interrogation of the suspect cannot represent an assumption that the defendant and the defence attorney are familiar and agree with that part of the record, that is, that it contains the "original statement of the suspect" that was given during his interrogation. Although, as the aforementioned author points out, it is possible that the record, all of which are not signed, really contains the full and original statement of the suspect, when assessing its legality in the proceedings in which this evidence is contested, the court should proceed with additional care. In connection with the above, the Supreme Court of Cassation (2021b) took the position that the court must, in the course of the proceedings, in each specific case, assess the legality of such evidence (record of the hearing of the defendant, each sheet of which is not signed), i.e. whether there is a violation of the provisions of Art. 235, para. 3. of the CPC (according to which "the record is signed by the person examined, and if the record consists of several sheets, the person examined or examined signs each sheet") of such significance that this evidence should be separated from the case file. Therefore, the record made in the above-mentioned manner does not

mean absolutely neither legal nor illegal evidence, but its influence on the passing of a legal verdict has to be evaluated in each specific case.

Also, in the case where the defendant hired two (selected) defence attorneys, the record of the hearing of the defendant will not constitute illegal evidence in the case that the defendant was heard by the police authorities in the presence of one of the selected defence attorneys, even though the defendant did not give a statement in the presence of the other defence attorney he hired, since the defence is ensured when one defence attorney participates in the proceedings (Supreme Court of Cassation, 2020f).

Crime Scene Investigation (Art. 133–136 CPC)

A crime scene investigation is an evidentiary action that, in accordance with the provisions of the CPC (Art. 133, para. 2), the procedural authorities can undertake in relation to a person, thing or place. Since it is an evidentiary action that is undertaken in most cases by the police, it is important to point out which actions or omissions of the police during the undertaking of this evidentiary action can make the crime scene investigation record illegal evidence. Also, it is important to point out in which cases the courts established that the crime scene investigation record constitutes legal evidence on which the court decision can be based, despite the contrary claims of the legal remedy applicant.

In this sense, the importance of the content of the record on the crime scene investigation, in which the facts established by the direct observation of the authorities of the procedure during its implementation, i.e. the importance of the agreement of other acts that were adopted during the undertaking of this evidentiary action with the record on the crime scene investigation in the specific case, are noted, for example the Court of Appeal in Niš (2012), taking the position that the verdict cannot be based on an official note made by a forensic technician, which states clues that were not recorded in the record of the investigation.

Also significant is the judgment in which the Supreme Court of Cassation (2021a) found that there were no omissions by the police in the case when the police investigated crime scene of an object that was neither an apartment nor a room, i.e. an object that "does not represent any construction concept" such as a yard, haystacks in a meadow, piled wood in the forest, objects on the road, external parts of individual buildings such as gutters, flower pots, etc. Bearing in mind that the CPC provides special guarantees only in the case of a search of an apartment and other premises, the aforementioned objects that cannot be equated with an apartment or other premises are subjected to the crime scene investigation regime. Furthermore, as the authorized officials found the disputed objects of the criminal act in the gutter of the neighbouring house during the crime scene investigation, and not during the search of the house used by the defendant and in relation to which the court order was issued, the Supreme Court of Cassation established in the aforementioned decision that the absence of a physically separate record on the investigation of the place does not make the record of the search illegal, and in which it is stated in the note that the crime scene investigation of the said place was carried out. Namely, according to the provisions of Art. 136, para. 1 of the CPC, the legislator authorized the officials of the internal affairs body to carry out a crime scene investigation of every place where objects and traces of a criminal offense can be found, which further implies that the police officers in this

particular case legally carried out an investigation of the ground part of the gutter of the house, which was in the immediate vicinity of the house used by the defendant, without entering that house.

Furthermore, a certain debate in practice was caused by the use as legal evidence of photographs created by photographing data (SMS messages and correspondence via social networks) of the injured person's mobile phone or computer (with his consent) taken by police officers and by order of the competent public prosecutor. Namely, in a certain number of cases the Supreme Court of Cassation (2020e, 2021c, 2022d) took the position that the mentioned photographs can be used as evidence in criminal proceedings, since they were taken in compliance with the conditions for undertaking a crime scene investigation, which can be movable or immovable (Art. 135 of the CPC). Therefore, in the mentioned cases, it is a matter of crime scene investigations of movable property, which is undertaken in accordance with Art. 135 of the CPC. However, as indicated by the Supreme Court of Cassation in the legal position taken at the session of April 4, 2014, in case it is the mobile phone of the defendant and not the injured person, the acting authority should obtain the judge's order to search the phone of the defendant. The stated position is justified both from the aspect of the different procedural position and the role of the defendant and the injured person in the criminal procedure, as well as from the aspect of the protection of the constitutional and legal procedural guarantees of the defendant.

Temporary Confiscation of Items (Art. 147–151 CPC)

In relation to the aforementioned evidentiary action, it is important to note that the condition for the legal validity of the certificate on temporarily confiscated items, as evidence on which the court can base its judgment, is not only the existence of a court order for a search (and during the undertaking of which the proven action is carried out), but it can also be undertaken based on the legal powers of authorized officials of internal affairs bodies (Art. 286 para. 1 and 2 of the CPC, for example vehicle inspection). The stated position was taken by the Supreme Court of Cassation (2018, 2019b, 2019c, 2019d, 2020c, 2020d). The formal deficiencies established in the certificate of temporarily confiscated items and the search record do not automatically imply the illegality of the evidence, but the court should appreciate "the circumstances that led to the specific omission, as well as the importance of the omission in relation to the validity of the evidence" (Ćetenović, 2014: 103–122). In this sense, it does not constitute legally valid evidence of an error by the internal affairs body, during which the wrong basis for making a certificate, i.e. temporarily confiscating the case, was stated (Constitutional Court of the Republic of Serbia, 2020). Also, it is important to point out the position of the Supreme Court of Cassation (2020a, 2015) which indicates that the authorized officials of the internal affairs authorities acted legally in the case of issuing a certificate on temporarily confiscated items that was signed without the presence of a defence attorney, bearing in mind that the CPC stipulates the possibility of temporary confiscation of items from any person (in accordance with the provisions of Art. 147 and Art. 286, para. 1 and 2 of the CPC), even in a situation before a certain person acquires the status of a suspect. Also, in support of the above-mentioned point of view, the Supreme Court of Cassation points out that the legislator does not prescribe the obligation of the presence of a defence attorney when signing the certificate on

temporarily confiscated items, as a result of which such a certificate does not constitute illegal evidence, or evidence on which the verdict cannot be based.

A certificate of temporarily confiscated items issued by police authorities, in which the specified amount of narcotic drugs measured during the seizure from the defendant on the spot, differs from the amount of drugs specified in the expert record determined by the expert, is not illegal evidence, as established by the Supreme Court of Cassation (2019a). Namely, as considered by the Supreme Court of Cassation, the legality of the said certificate is not called into question since during the criminal proceedings the reason for the existence of this difference was established beyond doubt, i.e. that it was the result of a faulty digital scale used by authorized officials when measuring the narcotic drugs found in the accused.

Search (Art. 152–160 CPC)

In order for the record of the search to constitute legal evidence, it is necessary to act in accordance with the procedural provisions that prescribe the prerequisites for conducting the evidentiary action of the search (Art. 156 of the CPC), search procedure (Art. 157 of the CPC) as well as other provisions that regulate the rules on this evidentiary action (Court of Appeal in Novi Sad, 2016). Bearing in mind the search carried out by authorized officials on the basis of a court order, in a situation where this evidentiary action was carried out on the basis of the order of a lower first-instance court, but during the search objects were found, due to which a different qualification of the criminal offense was carried out, in terms of whether it is a case for which the higher court of first instance has jurisdiction, the record of the search as well as the certificate of the temporarily confiscated items will represent legally valid evidence on which the judgment can be based, but provided that other legal conditions are met (Ćetenović, 2014: 103–122). In the aforementioned case, it is clear that authorized officials cannot be charged with determining which criminal offense has been committed, bearing in mind that, *inter alia*, authorized officials of internal affairs bodies do not perform legal qualification of the committed criminal offense.

The record of the search of the apartment and other premises, made by authorized officials of the internal affairs body, will constitute illegal evidence in the event that the police officers did not indicate in the record during the search that the defendant, as the owner of the apartment, was instructed before the start of the search that he had the right to hire a lawyer who can attend the search (Supreme Court of Cassation, 2021d). Therefore, according to the opinion of the Supreme Court of Cassation, informing a person that he has the right to a defence attorney is a necessary legal prerequisite for undertaking this evidentiary action, regardless of the fact that the provision of Art. 156, para. 2 of the CPC regulates the presence of a defence attorney during the search as a possibility and not as an obligation. Also, in the specific case, the aforementioned court confirmed the doctrine that "evidence derived from illegal evidence is also considered illegal", as a result of which it judged as illegal the certificate of items temporarily seized from the defendant that were found during the search, since the same was obtained by police authorities on the basis of the illegally conducted evidentiary search of the apartment and other premises.

One of the cases in which the authorized officials of the internal affairs acted contrary to the legal provisions, and due to their misinterpretation, i.e. incorrect application a concreto,

is when determining a caravan that is suitable for living as a vehicle and not as a living space. Namely, in the specific case, the police authorities, according to the position of the Supreme Court of Cassation (2022b), wrongly inspected the caravan as a vehicle (in accordance with the powers from Art. 286, para. 1 and 2 of the CPC) since the caravan was fit for habitation and should have been treated as a residential facility, in which case they had to obtain a search warrant and carry out the search action as evidence.

Furthermore, certain doubts in practice, such as those that arise in connection with the examination of the injured person's mobile phone, also arise in relation to the search of the defendant's mobile phone by authorized officials of the internal affairs body. Namely, as determined by the Supreme Court of Cassation (2020b) and the High Court in Čačak (2019), "mobile phones can be considered devices for automatic data processing, in the sense of Art. 152, para. 3 of the CPC, taking into account the equipment of mobile phones, the possibility of accessing the Internet and the exchange of e-mails and other electronic data, whereby electronic records can be stored in different files in the phone itself", and searches can be carried out in accordance with the mentioned legal provision, and in terms of provision of Art. 155 of the CPC, which stipulates that "upon the reasoned request of the public prosecutor, the search is ordered by the court".

In addition to the examples from court practice on the illegality of records of searches of apartments and other premises, it is also important to point out the cases in which the Supreme Court of Cassation found that the records of the undertaking of the said evidentiary action by authorized officials of the internal affairs bodies were legal, and that the allegations of the applicants within legal remedies were unfounded. Namely, the Supreme Court of Cassation (2022e) found that the search record in which the police officers stated that the objects "found during the search and that are described in more detail in the certificate of temporarily confiscation of items, which is considered an integral part of that record, is not illegal, and certificate was signed by the defendant; the failure to describe in the records the items that are confiscated and the place where they were found does not make the records illegal". Also, as legal, the Supreme Court of Cassation (2016) also assessed the record of the search of the apartment, in which it was stated that the search would be carried out by certain officials, but in fact the search was carried out by other officials. Namely, the aforementioned has no effect on the legality of the record of the search of the apartment, since the provision of Art. 155 of the CPC stipulates that it is sufficient just to state the name of the authority that will conduct the search, which was done in the specific case.

CONCLUSION

The issue of the criminal procedure institute of illegality of evidence occupies an important place in the doctrine and judicial practice, since it is an institute that implements the fundamental principles of the rule of law. Also, the reason for this is primarily that the Constitution does not contain provisions, i.e. it does not regulate the aforementioned institute, while the CPC does not provide a definition of evidence. However, it is important to note that the Constitution ensures the implementation of the institute of illegality of evidence in an indirect way, by proclaiming certain prohibitions (such as the prohibition

of violence and extortion of statements from persons deprived of their liberty, with respect for is personality and human dignity (Art. 28), i.e. by proclaiming certain rights, such as: inviolability of the apartment (Art. 41), confidentiality of letters and other means of communication (Art. 67). On the other hand, the CPC prescribes which evidence should be considered as illegal evidence and that court decisions cannot be based on illegal evidence (Art. 16), as well as that illegal evidence cannot be used in criminal proceedings (Art. 84). Regarding the determination of which evidence is illegal evidence, there are no conflicting opinions in the doctrine and judicial practice when it comes to evidence that is in itself and directly regarding the method of obtaining contrary to the Constitution, the CPC, other laws and standards of human rights in criminal proceedings. However, when it comes to the doctrine of the "fruits of the poisonous tree", i.e. when it comes to evidence that according to the method of obtaining is indirectly contrary to the Constitution, the CPC, other laws and standards of human rights in criminal proceedings, the doctrine has taken different positions. Modern doctrine is generally of the opinion that the aforementioned legal solution is justified, but, on the other hand, certain authorities rightly point out that in some situations, it is useful to determine whether there is a direct connection between illegal and circumstantial evidence or whether the circumstantial evidence would have been discovered even without the original illegal evidence, instead of judicial practice, if necessary, resorting to the non-separation of evidence, relying on the question whether the judgment would have been passed even without that evidence. Domestic jurisprudence also accepted the doctrine of the "fruits of the poisonous tree", while, for example, the ECHR refused to apply the said doctrine in the specific case. It is important to note that American jurisprudence, in which this doctrine was created, established certain exceptions.

As the internal affairs authorities, i.e. the police, during the performance of their duties, are faced with the collecting of evidence on a daily basis, on the one hand, as well as the fact that the illegality of evidence represents *de facto* judicial standards, it was of great importance to establish in which cases the courts found that the authorities of internal affairs caused the illegality of the evidence by the method of obtaining evidence, and in which cases they did not do so. In the analysed judicial decisions of the domestic courts, it was established that in certain cases, authorized officials acted contrary to the legal provisions when conducting the following evidentiary actions: hearing the accused (Art. 85-90 of the CPC), crime scene investigation (Art. 133–136 of the CPC), temporary confiscation of items (Art. 147–151 of the CPC) and search (Art. 152–160 of the CPC). Also, from the analysed court decisions, it emerges that the authorized officials of the internal affairs bodies, by carrying out certain evidentiary actions, caused the illegality of specific evidence, primarily due to the misinterpretation of legal provisions that *in general* regulate the field of (il)legal evidence, as well as due to the multitude and variety of everyday cases that can appear in practice. In addition to the decisions in which the court, contrary to the claims of the of the legal remedy applicant, found that there was no illegal behaviour by the police when obtaining evidence - it is important to point out that in cases where the court still found that the evidence obtained by the police was illegal, it is not a question of a deliberate and gross violation of basic human rights and freedoms, that is, it is not a question of incriminated behaviour of police officers, such as extortion of statements or abuse and torture. In accordance with the above, it is desirable and expedient to make more accessible court decisions in which it was established that in a specific case certain

evidence is illegal, i.e. to introduce them (in an organized manner), in order to remove doubts as to how to act in a specific case.

Finally, it is important to point out the standards of the ECtHR that the court adopted in relation to illegal evidence. First of all, it is necessary to point out that the ECHR does not contain direct provisions on illegal evidence, but legal evidence is supported by the proclamation of certain prohibitions, such as the prohibition of torture from Art. 3 of the ECHR, that is, certain rights such as the right to a fair trial (Art. 6 of the ECHR), the right to respect for private and family life from Art. 8 of the ECHR. In this sense, from the analysed court decisions, it was established that the ECtHR does not assess whether certain evidence is legal in national law, but whether the actions of national authorities in that way resulted in a violation of a certain convention right, which caused a violation of the right to a fair trail from Art. 6 of the ECHR. Thus, the court took the position that personal evidence obtained through torture, inhumane or degrading treatment always leads to the unfairness of the procedure as a whole, which also applies to obtaining material evidence through torture. However, if the material evidence was obtained by inhumane and degrading treatment, or if there was a violation of, for example, the rights from Art. 8 of the ECHR, the court in each specific case assesses the extent to which such a violation of convention rights affected the fairness of the proceedings as a whole.

REFERENCES

Bajović, V. (2013). O pravno nevaljanim dokazima i „plodovima otrovnog drveta". *Pravni život*, *62*(9), 743–758.

Bojanić, I., & Đurđević, Z. (2008). Dopuštenost upotrebe dokaza pribavljenih kršenjem temeljnih ljudskih prava. *Hrvatski ljetopis za kazneno pravo i praksu*, *15*(2), 973–1003.

Brkić, S. (2011). Upotreba nezakonitih dokaza u krivičnom postupku Srbije. *Zbornik radova Pravnog fakulteta u Novom Sadu, 45*(1), 183–214.

Bugarski, T. (2014). *Dokazne radnje u krivičnom postupku*. Pravni Fakultet Univerziteta u Novom Sadu.

Carić, M. (2010). Novosti u sustavu nezakonitih dokaza s osobitim osvrtom na čl. 10. st. 3. i 4. ZKP/08. *Hrvatski ljetopis za kazneno pravo i praksu*, *17*(2), 839–866.

Constitution of the Republic of Serbia. (2006–2021). *Official Herald of the Republic of Serbia*, 98/2006, 115/2021. https://www.paragraf.rs/propisi/constitution-of-the-republic-of-serbia.html

Court of Appeal in Belgrade, *Kž1. 77/19*, Decision of February 13, 2019.

Court of Appeal in Belgrade, *Kž1. 176/20*, Decision of September 10, 2020.

Court of Appeal in Niš, *Kž. 2222/12*, Decision of September 13, 2012.

Court of Appeal in Niš, *Kž. 557/14*, Decision of February 5, 2015.

Court of Appeal in Novi Sad, *Kž1. 1414/15*, Decision of March 2, 2016.

Court of Appeal in Novi Sad, *Kž1. 363/118*, Decision of May 22, 2018.

Court of Appeal in Novi Sad, *Kž2. 1506/19*, Decision of October 29, 2019.

Constitutional Court of the Republic of Serbia, *Už-4677/2015*, Decision of June 4, 2020.

Ćetenović, Lj., & Blanuša, A. (2017). Sudska praksa Apelacionog suda u Kragujevcu u postupcima po pravnim lekovima. *Bilten Vrhovnog kasacionog suda*, (2), 180–213.

Ćetenović, Lj. (2014). Dokazi na kojima se ne može zasnivati presuda. B*ilten Vrhovnog kasacionog suda*, (3), 103–122.

Grubač, M. (2002). *Krivično procesno parvo: uvod i opšti deo*. Službeni glasnik.

Hails, J. (2009). *Criminal evidence.* Wadsworth Cengage Learning.

High Court in Čačak, *Kž 41/18*, Decision of June 13, 2018.

High Court in Čačak, *Kž 53/19*, Decision of August 20, 2019.

Ilić, G. P. (2015). O nezakonitim dokazima u krivičnom postupku [About illegal evidence in criminal proceedings]. In Đ. Ignjatović (Ed.), *Kaznena reakcija u Srbiji* (V deo) (pp. 75–87). Pravni fakultet Univerziteta u Beogradu.

Ilić, G., Majić, M., Beljanski S., & Trešnjev, A. (2013). Komentar Zakonika o krivičnom postupku. Službeni glasnik.

Ilić. I. (2015). Illegal evidence in criminal proceedings. *International Scientific Conference "Social change in the global world"* (pp. 149–156). Center for Legal and Political Research.

Keane, A., & McKeown, P. (2011). *The modern law of evidence*. Oxford University Press.

Martinović, I., & Kos, D. (2016). Nezakoniti dokazi: teorijske i praktične dvojbe u svjetlu prakse Europskog suda za ljudska prava. *Hrvatski ljetopis za kaznene znanosti i praksu*, *23*(2), 311–338.

Obradović, B., & Župan, I. (2011). „Plodovi otrovne voćke" u hrvatskom i poredbenom pravu. *Hrvatski ljetopis za kazneno pravo i praksu*, *18*(1), 113–142.

Pisarić, M. (2010). O nedozvoljenim dokazima u krivičnom postupku. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *44*(2), 363–384.

Pitler, R. M. (1968). The fruit of the poisonous tree revisited and shepardized. *California Law Review*, *56*(3), 579–651. https://doi.org/10.15779/Z389T9Z

Schwikkard, P. J., & Van der Merwe, S. (2016). *Principle of evidence*. Juta Legal and Academic Publishers.

Skorupka, J. (2021). The rule of admissibility of evidence in the criminal process of continental Europe. *Revista Brasileira de Direito Processual Penal*, *7*(1), 93–122. http://dx.doi.org/10.22197/rbdpp.v7i1.526

Stanković, B. (2022). *Nezakoniti dokazi u krivičnom postupku* [PhD thesis, University of Belgrade, Faculty of Law].

Supreme Court of Cassation, *Kzz 933/15*, Judgment of November 4, 2015.

Supreme Court of Cassation, *Kzz 239/16*, Judgment of March 23, 2016.

Supreme Court of Cassation, *Kzz 95/17*, Judgment of February 8, 2017.

Supreme Court of Cassation, *Kzz 1199/2018*, Judgment of November 6, 2018.

Supreme Court of Cassation, *Kzz 907/2019*, Judgment of September 25, 2019a.

Supreme Court of Cassation, *Kzz 706/2019*, Judgment of October 3, 2019b.

Supreme Court of Cassation, *Kzz 793/2019*, Judgment of October 24, 2019c.

Supreme Court of Cassation, *Kzz 1205/2019*, Judgment of November 21, 2019d.

Supreme Court of Cassation, *Kzz 1438/19*, Judgment of February 4, 2020a.

Supreme Court of Cassation, *Kzz 1378/19*, Judgment of February 11, 2020b.

Supreme Court of Cassation, *Kzz 1424/19*, Judgment of February 27, 2020c.

Supreme Court of Cassation, *Kzz 640/20*, Judgment of July 15, 2020d.

Supreme Court of Cassation, *Kzz 1044/20*, Judgment of November 18, 2020e.

Supreme Court of Cassation, *Kzz 1393/20*, Judgment of December 16, 2020f.

Supreme Court of Cassation, *Kzz 59/21*, Judgment of January 27, 2021a.

Supreme Court of Cassation, *Kzz 813/21*, Judgment of August31, 2021b.

Supreme Court of Cassation, *Kzz 929/21*, Judgment of September 21, 2021c.

Supreme Court of Cassation, *Kzz 1155/21*, Judgment of November 2, 2021d.

Supreme Court of Cassation, *Kzz 182/22*, Judgment of March 9, 2022a.

Supreme Court of Cassation, *Kzz. 182/22*, Judgment of May 18, 2022b.

Supreme Court of Cassation, *Kzz 350/22*, Judgment of May 24, 2022c.

Supreme Court of Cassation, *Kzz. 607/22*, Judgment of July 6, 2022d.

Supreme Court of Cassation, *Kzz. 713/22*, Judgment of July 12, 2022e.

Škulić, M. (2013). *Krivično procesno pravo.* Pravni Fakultet Univerziteta u Beogradu.

Vasiljević, T. (1981). *Sistem krivičnog procesnog prava SFRJ*. Savremena administracija.

Vitkauskas, D., & Dikov, G. (Eds.) (2018). *Zaštita prava na pravično suđenje po Evropskoj konvenciji o ljudskim pravima: priručnik za pravnike praktičare*. Savet Evrope.

Worrall, J. (2009). *Criminal procedure: From first contact to appeal.* Allyn & Bacon.

Živanović, K. (2018). Posebna dokazna radnja tajnog nadzora komunikacije: praksa Evropskog suda za ljudska prava u slučaju neobrazložene naredbe suda. *NBP. Nauka, bezbednost, policija, 23*(3), 287–310. https://doi.org/10.5937/nabepo23-18350

Živanović, K. (2020). Zlostavljanje, mučenje i iznuđivanje iskaza osumnjičenog u krivičnom zakonodavstvu Republike Srbije. *Bezbednost*, *62*(1), 157–173. https://doi.org/10.5937/bezbednost2001157Z

Živanović, K. (2022). *Žalba protiv presude u krivičnom postupku* [PhD thesis, University of Novi Sad, Faculty of Law].