

Application of exclusionary rule of illegal evidence in investigation stage

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Abstract: *One of the important rules of criminal procedure law is the exclusion rule of illegal evidence, which is not only a sign of the legitimacy of the procedure, but also reflects the institutional protection of human rights. For example, investigators make suspects confess through torture, mental torture, corporal punishment and abuse. In real life, a series of unjust, false and wrong cases such as the Du Peiwu case reflect that the exclusion rule of illegal evidence in the criminal procedure law has not been deeply implemented in the application of grassroots criminal cases. In this paper, the value of excluding illegal evidence in the investigation stage, the criminal collection and detention system of illegally excluding evidence, and the outstanding problems and solutions to make the criminal procedure law achieve a relative balance between the two scales of procedural due process and human rights protection.*

Keywords: *Exclusion of illegal evidence; Investigation stage; Collection and seizure; Legality review of evidence*

1. Introduction

Although the criminal procedure law of our country stipulates the rules of illegal evidence at all stages, and advocates that the earlier the time of the exclusion of illegal evidence is conducive to the speed of the detection of the case, it has received a lot of doubts in the investigation practice, and even many doubts think that this is just a chanting style of handling the case. The research center of this paper starts from the unique advantages of the exclusion of illegal evidence in the investigation stage of the case, so that the investigators can understand the unique charm of the rule of the exclusion of illegal evidence, make up for the lack of evidence in the case, so as to speed up the handling process of the case.

2. The value of eliminating illegal evidence in the investigation stage

Restrictions on personal freedom, illegal search, seizure and other means in the criminal Procedure law are easy to violate the protection of human rights, which is mutually exclusive with the provisions of the Constitution respecting and protecting human rights, but it is difficult to obtain in backward remote mountainous areas and is the most critical link in the smooth progress of a case at the stage of investigation. At this time, investigators are eager to collect criminal evidence. And the suspect denied, such as rape, the scene of the case is not installed monitor, the victim reported, even if there is evidence to prove that there are consequences of violent injury, but after a certain period of time sperm loss of survival coupled with difficult to prove against their own heart of the true will, then cannot Conviction and sentencing according to the principle of consistency between subjective and objective in criminal law. It is understandable that, given the difficulty of obtaining evidence, investigators have to take ingenious measures. However, coercive measures that violate human rights are not desirable in obtaining evidence, once taken, it will directly or indirectly lead to the breeding of unjust, false and wrong cases. Only by stopping the evidence collection behaviors that violate human rights at the source in time, can the probability of unjust, false and wrong cases be fundamentally reduced, so as to achieve procedural and substantive fairness and justice. Once a case enters the stage of review and prosecution, on the one hand, it is the reversal of the procedure and the waste of judicial resources; on the other hand, it is the expansion of social public opinion and the resistance of the victims faced by the three public prosecutors.^[1] When the case goes to the trial stage, the case will really become a case of miscarriages of justice. Therefore, the earlier the application of the exclusion rule of illegal evidence, the more conducive it is to timely correct the flaws and deficiencies in the case. Correct the direction of handling the case, accurately find the breakthrough of the case, restore the truth of the case, timely relieve the grief

of innocent case personnel, and let judicial justice meet the light again.

In the Criminal Procedure Law, Strict exclusion Provisions, and Public Security Regulations, it is clearly stipulated that illegal evidence found at the investigation stage should be excluded, and it should be excluded according to law. If we do not think about how to make this system better within the objective scope of the law, and only describe the reasons and reasons why this system is difficult to implement in the investigation stage from the subjective imagination, then this system is nothing but a dummy. Since the law has formulated this rule, there are legitimate reasons for it. We should comprehensively and deeply penetrate into all stages of the criminal procedure law, not only talking about whether this system is feasible at the level of theoretical research, but also implementing this theory into practice, and making this system more mature by combining the experience and methodology of cases.

2.1. Enhance judicial credibility

In the Criminal procedure Law, judicial credibility is reflected in the details of every case handling. It is not only the use of correct and effective evidence to bring criminal suspects to judicial trial, but also the promotion of legal procedures at every step. If the parties or participants in the proceedings question the authenticity and objectivity of the evidence during the process of presenting evidence in the court. In the case that reasonable doubt cannot be excluded, it is not only the loss of judicial authority that causes public dissatisfaction, but also the suspicion of the ability of the case personnel and the cold heart of procedural justice. If illegal evidence is excluded in the investigation stage, so that such evidence cannot enter the litigation track, then it will not affect the credibility of the judiciary and the pressure of public opinion. In the investigation stage, timely warning of the case personnel must strictly collect evidence in accordance with the provisions of the Criminal Procedure Law and regulate investigation-related behaviors, which is also a timely and effective prevention of miscarriages of justice and can help maintain the majesty of the judiciary.

2.2. Improve the ability to handle cases

Investigators at the investigation stage are directly exposed to the rules of illegal exclusion of evidence, and the authenticity and integrity of relevant evidence is the first judgment made by investigators. Such judgment is whether the exclusion should be made, what is the legal basis for the exclusion, whether documentary evidence and material evidence can be supplemented, and whether unknown fragments of electronic data and witness testimony are excluded. These can allow investigators to make their own thinking, so as to learn the reasons for the exclusion, which has a more clear plan for future reconnaissance operations, so as to improve the level of handling cases and thinking ability.^[2] Of course, the objective conditions and environment of evidence collection and the difficult situation of the progress of the case all affect the investigation level and ability of the investigators. Compared with the trial stage in which illegal evidence is excluded, there is a large span from the trial stage to the investigation stage, and there is also the review and prosecution stage in the middle. However, in the trial stage, there is generally no contact with the investigators in the investigation stage in terms of evidence business, so if the evidence is directly excluded in the trial stage, the investigators will not pay attention to the progress of the case because of their busy work. Unless it is determined that the facts of the case are unclear and the evidence is insufficient, or there is a flaw in the procedure, the case will not be avoided, and the case will be reversed. In this case, the case will be sent to the investigation department again to supplement the evidence, otherwise it is difficult for the investigators to follow the trajectory of the illegal evidence exclusion in the case, which is not conducive to improving their learning ability in the exclusion of illegal evidence.

2.3. A Timely correction of evidence

The task of investigators is not just to exclude the illegal means of obtaining evidence such as torture and tired interrogation, after which the evidence is not collected, but to say whether it can be proved that the crime was committed by the criminal and whether it can prove the facts of the case if the legal evidence is collected accurately and efficiently. Even illegally obtained confessions, such as by inducement, passage, etc., can be misdirected into circumstances unknown to the suspect and may not be based on his or her own private thoughts. When the criminal suspect is informed that he has the right to illegally exclude evidence, after the investigator is replaced, if the criminal suspect speaks out voluntarily, he can still continue to collect evidence. The investigation stage is short of time, and if some evidence is not timely mastered, the case will enter the review and prosecution stage, I am afraid that the evidence

will miss its timeliness. It is very likely that the case will be retried due to insufficient evidence, or the criminal will be acquitted, so it is necessary to grasp the search conditions of the investigation phase, otherwise the criminal will be off the grid, justice will be late, or simply non-existent. The unreasonable behavior of collecting evidence of investigators in the investigation stage cannot lead to indulgence of criminals, therefore, collecting supplementary evidence is a necessary quality of investigators.

3. Criminal search and seizure of illegal evidence exclusion rule

3.1. Criminal search

Criminal search refers to a kind of investigation action in which the investigators at the investigation stage search and seize the body or residence of the criminal suspect, as well as the possible hiding of criminal certificates and articles. A search warrant should generally be issued when searching the residence of a criminal suspect, because the protection of an individual's home is also one of the rights within the scope of human rights, and the criminal law cannot impose restrictions on people, and it also prevents people from breaking into homes under the guise of search. Disturbing the social order or causing unnecessary mental panic so a search warrant is also a defense right to protect citizens. Of course, in the case of emergency, if the timely search or seizure will lead to the destruction of evidence or the loss of the criminal suspect is afraid to flee, then as an exception, it is also necessary to supplement the formalities within the effective time. Although procedural justice is an important wheel in criminal procedure law, it is sometimes necessary to take care of the pressing justice needs of the entity.

3.2. Criminal seizure

Most of the criminal detention system reflects the discretion of the case personnel. As long as the public security organs believe that the property and articles related to the case, will be sealed up and seized. In practice, as the owner of the item involved wants to get back, it is very difficult. There is no specific remedy mechanism for criminal searches. Unless after being seized by the public security organs, the parties can prove that the object has nothing to do with the case, neither a criminal tool nor the proceeds of crime, if, like some cases, there is key evidence hidden in the mobile phone, the public security organs often entrust judicial identification agencies to carry out data extraction identification of the mobile phone, which is difficult to retrieve. Or, according to the specific content of the criminal judgment, determine which items can be taken back, the ruling part of the criminal judgment is divided into two contents, the second part is the disposition of the property involved. For the seized property, which belong to the tools of crime, illegal income, corresponding to how to confiscate or return, there are clear provisions.

3.3. On improving the relief measures of criminal search and seizure

China's search and seizure system has a legislative gap in terms of relief. I suggest that the legality of the subject of review should be examined before search and seizure. This work can be done by an impartial third party in the court or procuratorate. In my opinion, the procuratorate is more appropriate as the examination and supervision organ in our country at present. The necessity lies in the fact that the search and seizure act will violate the legitimate rights and interests of the citizen's personal privacy, personal life, property, and even involve the infringement of the right to life. Therefore, when making a search warrant, a certain threshold and requirements should be set, or a certain scope should be specified, or it can only be applied to a certain period of time, after which it needs to be reissued or invalid. The main premise of this activity is that it does not violate laws and regulations, and the parties have the right to apply for state compensation for property losses or mental damage caused by professional investigation activities. And this right should also be informed by the case personnel in a timely manner and is not subject to certain limitations.^[3]

4. Progress in the application of exclusionary rules of illegal evidence

The new progress of the exclusion rules of illegal evidence in our country is mainly reflected in the "strict rules", and the progress of these rules mainly has the following points.

4.1. The concept and scope of extorting confessions by torture are expanded in detail

The more obvious progress in our country's exclusionary rule of illegal evidence is the explicit repetition of confession. That is, repeated confession means that investigators use torture to extract a confession from a criminal suspect to make a guilty statement, and later the confession that is the same as the confession made by the criminal suspect under the influence of the forced confession should be excluded according to law. ^[4]Of course it's in the Platoon The Regulations also stipulate two exceptions to the exclusion of repeated confession: one is the change of the subject in the investigation stage; The second is the change of litigation stage. This shows that the judicial practice should avoid taking too arbitrary practices, cannot be generalized.

4.2. The functions of procuratorial organs to examine disputes over the legality of evidence before trial have been clarified

According to the "Strict Rules", during the pre-trial meeting, the people's procuratorate shall explain the legality of the evidence collection methods and procedures in a targeted manner by presenting relevant evidence materials, etc., and the people's court may verify the situation accordingly and listen to opinions. ^[5]The "Strict Rules" clearly states that the people's procuratorate can withdraw relevant evidence in the pre-court meeting. At the same time, evidence that has been retracted may not be presented again in court without new reasons.

4.3. The defence and legal aid systems have been refined

Article 19 of the Strict Regulations stipulates that when a criminal suspect or defendant applies for legal aid, a lawyer shall be assigned to provide legal aid in accordance with the relevant provisions. Lawyers who provide legal aid may provide legal assistance to criminal suspects and defendants. If the criminal suspects and defendants have explicitly stated that they have been physically or mentally harmed or coerced into confessions by torture during the investigation, examination and prosecution or trial stage. If the criminal suspect or defendant has made an expression that is inconsistent with his inner will through illegal means such as obtaining evidence by violence, the legal aid lawyer can report, charge and protect the relevant departments on behalf of him on the situation of extracting confessions by torture and obtaining evidence illegally, which is the substantive and procedural rights of the parties.

5. The outstanding problems facing the examination of the legality of evidence

5.1. The risk of early intervention

The rule of illegal exclusion of early intervention is ambiguous, and in the continuous development and change of the case itself, if the unstable evidence is excluded in advance, it will lead to the risk of incomplete evidence chain or loss; In addition, the Criminal Procedure law clearly stipulates which cases the prosecution can intervene in advance, but in the practice of investigation often early intervention will lead to the progress of the public security and procuratorate cases, and there may be contradictions in evidence.

5.2. The forensics personnel themselves have different levels of professional competence

Non-legal investigators rely on their own sense of justice or subjective will to collect evidence, without long-term case handling and professional training can not guarantee the uniform application of legal standards to exclude evidence.

5.3. The internal organizational structure of the police is complex

The internal organizational structure of the public security is difficult to provide a fair and objective environment for the self-picketing exclusion of evidence, and some of them are faced with the risk of being overhung. As well as the use of a strong network of people to make real evidence difficult to come to light, or evidence that should not be excluded by the use of the influence of power excluded, evidence that should be excluded is retained, these are the consequences of the influence of power within the organization, take corrective action:

5.3.1. Follow-up to exclude evidence

Implement self-checking to check whether the exclusion of evidence conforms to the relevant requirements of the criminal Procedure law. Even if it meets the requirements, it is not only necessary to exclude evidence for the purpose of excluding evidence, but also to consider how to make up for the evidence loopholes that appear after the exclusion with new evidence.

5.3.2. Clarify the delineation of areas of competence between the investigative and rule of law departments

Use the internal inspection and performance evaluation system system to include the true situation of the legality review of excluded evidence. Case-handling personnel shall be responsible for implementing the handling opinions put forward by the examiners; The responsible person in charge of the legal system shall implement the related responsibility system with the legal police, and the situation of "failing to truthfully and timely fill in the Evidence Legality Review Record Form" and "failing to notify the case handling unit to correct or exclude the illegal evidence" shall be reflected in the performance evaluation. By reducing the authority brought by the judicial power of the public security organs and strict regulations on the evidence collection behavior, the arbitrary actions of judicial personnel can be better restricted. To achieve a balanced state of both program and substance.

6. Conclusions

In short, the exclusion rule of illegal evidence provides a strong impetus for the detection of cases and the development of criminal justice reform, which provides a guarantee for the standardized extraction of evidence and the correct use of legal evidence collection process. However, the relevant provisions of the existing criminal procedure law and its application in real life are difficult to reach the height and standard of the exclusion of illegal evidence. It is necessary to strictly follow the responsibility of the staff of the investigation organs to exclude illegal evidence stipulated in Article 56 of the Criminal Procedure Law to reshape the illegal evidence exclusion system in our country, which requires that the evidence collected within the public security organs should be examined in a timely manner, and the passive collection should be turned into an active attack, and the exclusion after the event should be transformed into an advance exclusion and synchronous exclusion. The active action of investigation organs not only effectively prevents invalid evidence from entering judicial procedures and trial procedures, but also speeds up the efficiency of handling cases and promotes substantive and procedural fairness, completes the most important part of judicial procedures, and realizes the goal of criminal justice reform at an early date.

References

- [1] Wen Zhe. Rule development and system improvement of exclusion of illegal evidence [J]. *Jiangxi Social Sciences*, 2018, 38(12):8.
- [2] Zhang Jianwei. Value expectation and system analysis of excluding illegal evidence [J]. *China Journal of Criminal Law*, 2017(4):19.
- [3] Wan Chun, Wu Mengshuan, Gao Yifei. Understanding and Application of Provisions on Several Issues Concerning the Strict Exclusion of Illegal Evidence in Handling Criminal Cases [J]. *People's Procuratorate*, 2017(14):12.
- [4] Wan Chun, Gao Yifei. Development of Rules for the Exclusion of Illegal Evidence in Criminal Cases—New highlights of the Provisions on Several Issues Concerning the Strict Exclusion of Illegal Evidence in Handling Criminal Cases [J]. *Chinese Journal of Criminal Law*, 2017(4):15.
- [5] Bian Jianlin, Xie Shu. Important Development of Exclusion Rules of Illegal Evidence in China: From the perspective of promulgation of the Regulations on Strict Exclusion of Illegal Evidence [J]. *Journal of Zhejiang Gongshang University*, 2017(5):8.