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Substantial Violation of Human Rights and Freedoms as a Prerequisite for Inadmissibility of Evidence

Violación sustancial de los derechos humanos y las libertades como requisito previo para la inadmisibilidad de las pruebas



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Resumen

Objetivo: El objetivo del artículo es analizar las distintas disposiciones legales y teóricas relacionadas con la determinación del contenido legal del concepto de declarar inadmisibles las pruebas por violación sustancial de los derechos humanos y las libertades. **Método:** Los autores utilizan métodos científicos generales y especiales que permiten obtener conclusiones y propuestas científicamente sólidas. En particular, se aplican métodos científicos, tales como dialéctico, comparativo-legal, sistema-estructural, generalización y lógico. **Resultados:** Se estudian las cuestiones problemáticas del procedimiento para declarar inadmisibles las pruebas debido a una violación sustancial de los derechos humanos y las libertades en el proceso penal de Ucrania. Se están enfocando algunas violaciones esenciales en la recolección de pruebas por parte de la fiscalía. Se analiza la jurisprudencia del TEDH en materia de procedimiento para declarar inadmisibles las pruebas. Se considera la implementación de la doctrina del “fruto del árbol venenoso” y la especificidad de su aplicación a la prueba directa y derivada por los tribunales nacionales y la jurisprudencia del CEDH. **Conclusiones:** Los autores argumentan que el investigador está obligado a cumplir con el procedimiento para las acciones de investigación prescrito por las disposiciones del CPC de Ucrania con el fin de garantizar los derechos humanos y las libertades. El análisis de la aplicación de las disposiciones del CPC de Ucrania y la jurisprudencia del CEDH con respecto a la cuestión planteada permite formular conclusiones sólidas.

PALABRAS CLAVE: proceso penal, violación sustancial de derechos humanos y libertades, pruebas inadmisibles, instrucción previa al juicio, juzgado.

Abstract

Objective: The aim of the article is to analyze the various legal and theoretical provisions related to the determination of legal content of the concept of finding evidence inadmissible due to substantial violation of human rights and freedoms. **Method:** The authors use general scientific and special methods that enable to obtain scientifically sound conclusions and proposals. In particular, scientific methods, such as dialectical, comparative-legal, system-structural, generalization and logical, are applied. **Results:** The problematic issues of the procedure for finding evidence inadmissible due to substantial violation of human rights and freedoms in the criminal proceedings of Ukraine are studied. Some essential violations in collecting evidence by the prosecution are under focus. The ECHR's case-law with regard to procedure for finding evidence inadmissible is analyzed. The implementation of the doctrine of "fruit of the poisonous tree" and specificity of its application to direct and derivative evidence by domestic courts and the case law of the ECHR is considered. **Conclusions:** The authors argue that the investigator is required to comply with the procedure for investigative actions prescribed by the provisions of the CPC of Ukraine in order to ensure human rights and freedoms. The analysis of the application of provisions of the CPC of Ukraine and the ECHR's case law regarding the issue raised enables to formulate sound conclusions.

KEYWORDS: criminal proceeding, substantial violation of human rights and freedoms, inadmissible evidences, pre-trial investigation, court.

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I. Introduction

The updated provisions of the CPC of Ukraine have become a prerequisite for the improvement of the concept of protection of human rights and fundamental freedoms during the pre-trial investigation and trial. These changes concern the specificity of assessing evidence by court in terms of its admissibility, determining the grounds and procedure for finding evidence inadmissible, determining the list of acts considered substantial violations of human rights and fundamental freedoms during procedural actions of obtaining evidence.

However, the analysis of domestic law, international legal acts, court decisions and legal positions (*ratio decidendi*) of the ECHR suggests that the uncertain interpretation of the provisions that determine the grounds, procedure for and effects of finding evidence inadmissible causes difficulties in their application. In particular, according to the results of surveys among investigators, prosecutors and judges, the main difficulties are related to the legal uncertainty of the procedure for finding evidence inadmissible at the pre-trial investigation stage (55%), the powers of investigators and prosecutors to make procedural decisions on inadmissibility of evidence (48%), criteria for their inadmissibility (68%), as well as the rules for assessing evidence collected with procedural violations (63%) (Osetrova, 2016, p. 3).

Moreover, the relevance of the research topic is in the need for legal regulation of the criteria for assessing substantial violation of human rights and freedoms during the pre-trial investigation, guaranteed by the Constitution of Ukraine, laws of Ukraine and international treaties to which the Verkhovna Rada of Ukraine consented to be bound. Furthermore, it is in development and enshrinement of the unified approach to finding evidence obtained as a result of a substantial violation of human rights and freedoms inadmissible in the provisions of the CPC of Ukraine.

The aim of the article is to study the legal content of the concept of finding evidence inadmissible due to substantial violation of human rights and freedoms, as well as the specificity of application of provisions of the Criminal Procedure Code of Ukraine (the CPC of Ukraine) and decisions by domestic courts of the ECHR's case law and the doctrine of "the fruit of the poisonous tree".

Some questions regarding the specificity of finding evidence inadmissible because of substantial violation of human rights and freedoms are covered in the works of scientists and practitioners, such as E. S. Osetrova (regarding the notion and content of the concept of inadmissibility of evidence in criminal proceedings, grounds for finding evidence inadmissible in the criminal proceedings of foreign countries, etc.); A. V. Panova (regarding the procedure for finding factual data inadmissible as evidence); V. V. Tiutiunyk (regarding the concept and criteria for assessing violations of law in finding evidence inadmissible, theoretical and applied aspects of admissibility of evidence in sentencing, the impact of the ECHR's case-law on the development of the concept of admissibility of evidence in criminal proceedings in Ukraine, etc.).

Moreover, the team of authors: V. Drozd, D. Luchenko, S. Ablamskyi, V. Vstras studied the specificities of ordering forensic examinations during the investigation of crimes committed against journalists; V. Drozd, Iu. Rusnak, O. Olishevskiy, V. Hapottii, O. Minkova studied the issues of regulation and law-application of obtaining samples for examination in criminal proceedings; O. Drozdov, O. Drozdova, S. Shulgin (regarding international review and national realities of application in proving the doctrine of "fruit of the poisonous tree"); S. Studennikov and L. Lazebnyi (regarding the specificity of application of the doctrine of "poisonous fruit" by courts); A. V. Ponomarenko, L. V. Havryliuk, A.-M. Yu. Anheleniuk, V. H. Drozd studied the issue of finding evidence inadmissible in criminal proceedings of Ukraine.

However, due to the uncertainty regarding the criteria for assessing substantial violation of human rights and freedoms in criminal proceedings and the absence of a unified approach, the practical significance of specificity of finding evidence inadmissible because of substantial violation of human rights and freedoms in criminal proceedings applying the ECHR's case law is currently particularly relevant.

II. Methodology

To achieve the aim of the study, a set of general scientific and special methods is used. A systematic approach determines application of these methods and enables to study the issues raised.

The dialectical method enables to set the objectives of the study in dynamics and interrelation, to find out the essence of substantial violations of human rights and freedoms during pre-trial investigation, to substantiate the grounds, procedure for and legal effects of finding evidence inadmissible, in particular from the perspective of both the integrity of the phenomenon and the interconnection of the elements. The comparative-legal method enables to compare the provisions of national law with the provisions of international law and foreign countries with regard to finding evidence inadmissible due to substantial violation of human rights and freedoms. The method of system analysis of legal provisions enables to find out key trends in law-application during finding evidence inadmissible due to substantial violation of human rights and freedoms, to identify gaps and contradictions in legal regulations and formulate proposals for improving the criminal procedure legislation of Ukraine. The method of generalization enables to formulate proposals to improve legal regulation of the grounds and procedure for finding evidence inadmissible. Logical method is the basis for the study of the procedure for finding evidence inadmissible in the criminal proceedings of Ukraine.

III. Results and discussion

Nowadays, “one of the most pressing issues not only in Ukrainian society but also in European community as a whole is the search for ways to increase the effectiveness of counteracting and preventing criminal offenses, the introduction of conceptually new methods of investigating grave crimes and crimes of especially grave severity, the number thereof increases every year unfortunately” (Drozd, Rusnak, Olishevskiy, Hapotii, Minkova, 2019, p. 129). Accordingly, the key to solving this problem is the implementation of a prompt, impartial investigation and trial in criminal proceedings with the application of due legal procedure to each participant in criminal proceedings, provided that their rights, freedoms and legitimate interests are protected (CPC of Ukraine, 2012). For example, according to Article 62 of the Constitution of Ukraine (the CU) and the official interpretation of the provisions of Part 3 of Article 62 of the CU, an accusation shall not be based on illegally obtained evidence, that is, with disrespect of constitutional rights and freedoms of man and citizen or of the procedure, means, sources of obtaining such evidence established by law. The court’s evidence admissibility examination is a guarantee of ensuring the rights and freedoms of man and citizen in criminal proceedings and the adoption of a lawful and fair decision in the case. Accordingly, the formal approach of the court in considering criminal proceedings to assess the evidence in terms of their relevance and admissibility leads to the revocation of the verdict and the appointment of reconsideration in court. However, it should be under focus that a special role in ensuring human rights and freedoms during the pre-trial investigation is assigned to the prosecutor, who is authorized to monitor compliance with the law during the pre-trial investigation in the form of procedural guidance, and to the head of the pre-trial investigation body required, according to its missions, to remedy violations of law in the event that they are admitted by the investigator.

It should be noted that in Part 1 of Article 84 of the CPC of Ukraine, the concept of evidence is considered as “factual data, obtained in a procedure prescribed by the CPC of Ukraine on grounds thereof the investigator, public prosecutor, investigating judge and court establish the presence or absence of facts and circumstances which are important for the criminal proceedings and are subject to be proved” and the provision of the CPC of Ukraine in connection with the fact that the accusation cannot be based on evidence obtained as a result of substantial violation of human rights and freedoms (Article 87 of the CPC), provided that the parties to the criminal proceedings confirm their obvious inadmissibility, are clearly inadmissible, and according to the CPC of Ukraine, this entails the impossibility of examining such evidence or termination of its examining in court, if such examination has been initiated. Otherwise, the court admits evidence during its assessment in the deliberation room, and consequently, evidence collected through information obtained as a result of a substantial violation of human rights and freedoms is found inadmissible by court. However, V. V. Tiutiunyk emphasizes that violation of human rights and freedoms and its impact on the probating value of the information obtained in some cases may be obvious, and in others, requires verification through other evidence (Tiutiunyk, 2015, p. 93).

Therefore, when deciding on admissibility of such evidence, the court is required to verify and state that the prosecution has complied with the procedural requirements for conducting investigative actions after obtaining court permission in cases provided for by the CPC of Ukraine. Accordingly, in case of violations of human rights and freedoms, as provided for by the content of Part 1 of Article 87 of the CPC of Ukraine, the court is required to assess the substantially of these violations. However, the CPC of Ukraine lacks the very criteria for assessing the substantially of violations of human rights and freedoms committed during criminal proceedings. In this regard, no single scientific approach to addressing this issue exists. particular, A. Mazalov argues that the concept of substantial violation of human rights and freedoms is evaluative and believes that the court’s assessment of evidence admissibility to some extent is subjective, but according to

him, the criteria for finding evidence clearly inadmissible in the presence of substantial violation of human rights and freedoms are the inability of a person to exercise his/her rights and freedoms in full (Mazalov, 2018). Summarizing the perspectives of scientists such as S. A. Pashin (1996, p. 358-367), M. L. Yakub (1974, p. 20), H. M. Minkovskyi and A. A. Eisman (Zhogin, 1973, p. 240) on the issue raised V. V. Tiutiunnyk considers that the assessment of the substantiality of violation of human rights and freedoms in the criminal proceedings should include: 1) violation of the principles of criminal proceedings in collecting and recording evidence; 2) any doubts about the validity of evidence obtained with disrespect of human rights and freedoms incapable of remedy; 3) obtaining evidence with disrespect of the rights and legitimate interests of participants in criminal proceedings incapable of remedy (Tiutiunnyk, 2015, p. 95-96).

Therefore, this classification of criteria for assessing essential violations of human rights and freedoms is general and may apply to other violations committed by participants in criminal proceedings during the pre-trial investigation. For example, "violation of the principles of criminal proceedings in collecting and recording evidence" can be cured by additional procedural actions, as well as in deciding on evidence inadmissibility the court is required to assess how the violation has limited the rights and legitimate interests of participants in criminal proceedings. According to the theory of determining other criteria, the court is required to clearly establish the fact of violation of human rights and freedoms during procedural actions by the investigator.

In conclusion, no consensus among scholars on the definition of criteria for substantial violation of human rights and freedoms in finding evidence inadmissible exist, but each of them identifies problematic aspects that may arise when a court decides on the admissibility of evidence. However, the court's arguments "for" and "against" finding evidence admissible should not be general and abstract. Therefore, Part 1 of Article 87 of the CPC of Ukraine, after the words "The Verkhovna Rada of Ukraine" should be added with the words "incapable of remedy." Article 87 of the CPC of Ukraine provides for the list of acts required to be found by court as substantial violation of human rights and fundamental freedoms. For example, the investigator's certain procedural actions, which require prior court permission, without such permission or with disrespect of its essential conditions, as one of the grounds for the court to recognize substantial violations of human rights and freedoms. It should be noted that compliance with the conditions of permission of the court for procedural actions involves procedural compliance with legal requirements for permission for investigative actions, as well as compliance with requirements with regard to the content and form of the motion and the procedure for their consideration. That is, these violations may relate to both the content of procedural documents and the procedure for conducting investigative actions.

summarise the results of judicial practice O. S. Osetrova (2016, p. 69, 70-71) notes that in 3% of proceedings, investigators commit procedural violations when obtaining court permission to conduct procedural actions. In particular, she emphasise that the burden of proving the legality of conditions for procedural actions that require prior court permission rests with the prosecution. Moreover, not only the procedure for obtaining permission of the investigating judge, but also the content and form of motions should be complied with, and in case of covert investigative (search) actions, the procedure for declassification of materials received should be complied with.

Accordingly, procedural actions, which require prior court permission, without such permission or with disrespect of its essential conditions, entail finding evidence, obtained as a result of such proceedings, inadmissible and as a consequence, a further conviction on the ground of such evidence is subject to revocation. For example, based on the results of the appeal, the court found the procedural action, the inspection record of the scene (in this case it was a search of housing, conducted without a decision of the investigating judge), as inadmissible evidence under para. 1 of Part 2 of Article 87 of the CPC of Ukraine. In this regard,

other evidence and the expert's opinion were also found inadmissible by the court, since the substance of plant origin sent for expert's examination was found and seized during housing inspection (Part 5 of Article 101 of the CPC of Ukraine). Moreover, during the inspection, the requirements of Part 1 of Article 227 of the CPC of Ukraine were violated. Therefore, the court's verdict based on inadmissible, inappropriate and insufficient evidence, obtained by the prosecution in substantial violation of the requirements of the CPC of Ukraine, was revoked (Ruling of the Appellate Court, 2015).

Therefore, one or another type of forensic examination requires an investigator, in addition to correctly determining the range of tasks assigned to the expert (Drozd, Luchenko, Ablamskiy, Vstras, 2019), to comply with the procedure for investigative actions prescribed by the provisions of the CPC of Ukraine. After all, "according to the case-law, provided substantial violations of human rights and freedoms during the examination of the scene, search, investigative experiment or other measures or procedural actions are determined, the material evidence or documents seized in the course of their conduct shall be found inadmissible by the court. Furthermore, an expert examination of such physical evidence (documents) shall be found inadmissible" (Ponomarenko, Havryliuk, Anheleniuk, Drozd, 2020, p. 150), consistent with the doctrine of "fruit of the poisonous tree." According to it, if the source of evidence is inadequate, then all the evidence obtained through it will also be considered inadequate.

It should be noted that in the national law application practice of criminal justice, recently the doctrine of "fruit of the poisonous tree", which actually "derives" from judicial practice, not of the will of the legislator, is quite actively used, though for further proper regulation it has been implemented in the relevant procedure laws" (Drozdov, Drozdova, Shulgin, 2020). In particular, there is an opinion that the theory of "fruit of the poisonous tree" is implemented in Part 1 of Article 87 of the CPC of Ukraine, which provides for that evidence resulting from the information obtained through substantial violation of human rights and freedoms evidence shall be inadmissible" (Panova, 2017, p. 45; Studennykov, 2019). The specificity of finding evidence inadmissible according to the rule of "fruit of the poisonous tree" is that the court decision must clearly prove the information that became the actual ground for the relevant investigative (search) action has derived from the actions that essentially violated human rights and freedoms (Lazebnyi, 2020).

The analysis of the practice of applying the doctrine of "fruit of the poisonous tree" enables S. Studennykov to single out the ECHR's judgments, which consider it necessary to assess the admissibility of the whole chain of evidence, based one after another, and not each individual piece of evidence. For example, the author cites the judgment in case "Nechyporuk and Yonkalo v. Ukraine", in which the ECHR has noted that evidence obtained in criminal proceedings with disrespect of the procedure established entails its injustice in general, regardless of: their probative value; whether they are decisive for the conviction of the accused by the court. In its judgment in cases "Balytskyi v. Ukraine", "Teixeira de Castro v. Portugal" and "Shabelnyk v. Ukraine", the ECHR applied a variant of the doctrine of "the fruit of the poisonous tree", that is, not only evidence obtained directly as a result of violation, but also evidence that would not have been obtained if the former had not been obtained. Therefore, admissible evidence obtained resulting from information, the source thereof is inadmissible evidence, becomes inadmissible (Judgment of Dniprovskiy District Court, 2018).

Therefore, the ECHR's ratio decidendi does not provide single approach to the application of the doctrine of "fruit of the poisonous tree", in fact, as well as in the practice of its application by the judicial system of foreign countries. For example, "in Germany, courts tend to admit evidence obtained as a result of an illegal search, and as a result of an investigation based on evidence obtained illegally. However, the ECHR assumes that if one piece of evidence is inadmissible in a single chain, the court is required to decide on the fairness of the trial as a whole. That is, if the proceedings in this case is generally fair, then evidence

obtained illegally may be admissible (the judgment of the ECHR in “Khan v. The United Kingdom”, “Schenk v. Switzerland”) (Studennykov, 2019). According to U.S. law, all adequate evidence is admissible unless otherwise provided by the U.S. Constitution, acts of Congress, or a U.S. court order. Inadequate evidence is inadmissible. In most cases, the legality or illegality of obtaining evidence in the United States is made by case law (Panova, 2017).

The focus on some specificity of the practice of applying the doctrine of “fruit of the poisonous tree” in the criminal process of Ukraine enables to conclude that it can be applied to the primary evidence, such as the protocols of investigative actions. Accordingly, if the annexes to these protocols are found inadmissible by the court, then, according to the practice, the preconditions for applying the doctrine of “fruit of the poisonous tree” and finding the protocols of investigative actions inadmissible are absent. For example, according to the content of the verdict of the Dniprovskiy District Court of Kyiv in criminal proceedings No. 755/11422/17 of 02 May 2018, the court found the annex to the protocol inadmissible evidence, because it did not specify a specialist as a participant in the investigative action, which contradicts Article 105 of the CPC of Ukraine, and therefore the court concluded that it was made by a person who did not take part in such actions. At the same time, the court draws the defense’s attention to the fact that even if this annex is considered as inadmissible evidence, preconditions for applying the doctrine of “fruit of the poisonous tree” and finding the inspection protocols inadmissible are absent, since the inspection protocols are primary while annexes are derivative.

Furthermore, it should be noted that “the interpretation of Part 1 of Article 87 of the CPC of Ukraine in terms of finding derivative evidence inadmissible enables to conclude that this rule can be applied to derivative evidence only in case of finding primary evidence inadmissible under Part 1-3 of Article 87 of the CPC of Ukraine. The very finding primary evidence inadmissible under other rules of admissibility provided for by the CPC of Ukraine does not give grounds for finding derivative evidence inadmissible on the basis of Part 1 of Article 87 of the CPC of Ukraine. In addition, applying the rule of Part 1 of Article 87 of the CPC of Ukraine regarding the inadmissibility of derivative evidence, the court is required to establish not only that the primary evidence has been obtained with disrespect of fundamental human rights and freedoms and used in the procedures that have led to obtaining the derivative evidence, but that the derivative evidence has resulted precisely from the information contained in the evidence found inadmissible by it in accordance with Part 1 of Article 87 of the CPC of Ukraine” (Resolution of the Supreme Court of Ukraine, 2019).

A scientific analysis and study of the content of the ECHR’s judgments (judgment of 10 November 2006 in the case of “Klimentyev v. Russia”, of 10 March 2010 in the case of “Bykov v. Russia”, of 21 October 2010 in the case of “Korniev and Karpenko v. Ukraine”, etc.) in respect of the criteria made by the court for assessing the legality of the procedure for obtaining evidence reveals the uncertainty of the ECHR’s admissibility of evidence, such as determination of criteria for assessing the legality of the procedure for obtaining evidence, and enables to argue that even if persons and bodies carrying out criminal proceedings comply with the procedure for a procedural action, prescribed by relevant national criminal procedure law, the ECHR can establish its illegality from the perspective of fair procedure (method) for obtaining evidence” (Tiutiunyk, 2013, p. 84). In this regard, it should be noted that the provisions of the CPC of Ukraine, which regulate the procedure and method for obtaining evidence, require improving in order to protect human rights and freedoms during the pre-trial investigation. In order to solve this problem, the procedure for finding evidence inadmissible during the pre-trial investigation requires improving. In particular, we believe that Part 1 of Article 89 of the CPC of Ukraine should be supplemented with the sentence as follows: “During the pre-trial investigation, the decision on the admissibility of evidence is made by the investigator, prosecutor, which entails the impossibility of its use in proving during the pre-trial investigation.”

Moreover, it should be considered that the judicial practice of using evidence obtained with disrespect of the law in the decision finds evidence inadmissible given the substantial of these violations. Therefore, it is expected that the courts face challenges in resolving this issue due to the lack of a clear definition of the concept of “obvious inadmissibility of evidence in criminal proceedings” in the CPC of Ukraine. Furthermore, it should be noted that currently ratio decidendi and case law of the ECHR are not only European legal standards, but also provides the legal system of Ukraine with holistic and important principles, definitions, guarantees, provisions that should harmonize national law and legal awareness, normalize existing gaps in legislative regulation, promote their clearer legal certainty and systematic (Tertyshnyk, 2017, p. 16).

However, in exercising their power to assess the admissibility of evidence, courts are required to move away from the prejudice that the defendant committed the crime, as the burden of proof lies with the prosecution and any doubt shall be interpreted in favor of the defendant. This right is based on the principle that a person accused of a criminal offense has the right to an acquittal or to have his/her conviction overturned in case of a lack of evidence against him/her and the burden of presenting sufficient evidence to prove guilt lies with the prosecution.

IV. Conclusion

In conclusion, it should be noted that in assessing the whole of evidence of a person’s guilt in a crime, the courts, admitting their subsidiary mission, shall take into account the ECHR’s case law, according to which evidence should be assessed on the basis of the proving criterion of “beyond reasonable doubt” that may result from the coexistence of sufficiently weighty, clear and mutually agreed conclusions or similar incontrovertible presumptions in respect of facts. Moreover, the quality of evidence should be considered, including whether the circumstances of obtaining it calls into question its reliability and accuracy. Therefore, the legal gaps regarding finding evidence inadmissible as a result of a substantial violation of human rights and freedoms need to be improved. That is why it is considered appropriate:

A. Part 1 of Article 87 of the CPC of Ukraine, after the words “the Verkhovna Rada of Ukraine” add the words “incapable of remedy”;

B. Part 1 of Article 89 of the CPC of Ukraine should be supplemented with the sentence as follows: “During the pre-trial investigation, the decision on the admissibility of evidence is made by the investigator, prosecutor, which entails the impossibility of its use in proving during the pre-trial investigation”.

Bibliographic References

- Criminal Procedure Codes of Ukraine of 13 April 2012. Retrieved from <https://zakon.rada.gov.ua/laws/show/4651>.
- Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Security Service of Ukraine with regard to the official interpretation of the provisions of the third part of Article 62 of the Constitution of Ukraine No. 12-pn/2011. (20 October 2011). Retrieved from <https://zakon.rada.gov.ua/laws/show/v012p710-1>.
- Drozd V., Rusnak Iu., Olishkevskiy O., Hapotii V., Minkova O. (2019). Obtaining samples for examination in criminal proceedings: problems of normative regulation and law enforcement. *Georgian Medical News*, 7–8 (292-293), 129–134.
- Drozd, V., Luchenko, D., Ablamskiy, S., Vatrash, V. (2019). Forensic examinations appointed at the investigation of crimes committed against journalists. *Amazonia Investiga*, 8 (24), 130–137. P.131.
- Drozdov, O., Drozdova, O., Shulgin, S. (2020). Can fair court “utilize” fruit of the poisonous tree: International historical review and national realities. Retrieved from <https://www.echr.com.ua/chi-mozhe-spravedlivij-sud-uzhivati-plodi-otruyenogo-dereva-mizhnarodnij-istorichnij-ekskurs-ta-nacionalni-reali%D1%97/?fbclid=IwAR17Ak>.
- Judgment of Dniprovskiy District Court of Kyiv of May 2. 2018. Case no. 755/11422/17. Retrieved from <https://app.pravosud.com.ua/search/#>.
- Lazebnyi, L. (2020). Finding evidence as “fruit of the poisonous tree”, the court must establish a connection between “tree” and “fruit”. Retrieved from <https://lexinform.com.ua/sudova-praktyka/vyznayuchy-dokazy-plodamy-otruyenogo-dereva-sud-maye-vstanovyty-zv-yazok-mizh-derevom-i-plodamy/>.
- Mazalov, A. (2018). Admissibility of evidence according to the latest amendments to the CP of Ukraine. Retrieved from <https://blog.liga.net/user/amazalov/article/30462>.
- Osetrova E. S. (2016). Recognition of evidence inadmissible in criminal proceedings: Candidates of juridical sciences’ thesis in specialty 12.00.09 «criminal process and criminal investigation; forensic expertise; operative investigative activity». National Academy of Internal Affairs, Kyiv. 22 p.
- Panova, A. V. (2017). Recognition of evidence inadmissible in criminal proceedings: monograph. Kharkiv: Pravo, 256 p.
- Pashin, S. A. (1996). Evidence in the Russian criminal procedure. In *Sostyazatelnoye pravosudiye: tr. nauch.-prakt. lab. Moskva: Mezhdunar. kom. sodeystviya pravovoy reforme*, 1 (2), 311–390.
- Ponomarenko, A.V., Havryliuk, L.V., Anheloniuk, A.-M.Y., Drozd, V.G. (2020). Inadmissibility of Evidence in Criminal Proceedings in Ukraine. *Amazonia Investiga*, 9 (29), 147–155. P. 150.
- Resolution of the Supreme Court of Ukraine of 8 October 2019. Proceedings no. 51-8259км18. Retrieved from <http://reyestr.court.gov.ua/Review/85238666>.
- Ruling of the Appellate Court of the Kherson region of 02 April 2015. Proceeding no. 11-kp/791/331/15. Retrieved from https://protocol.ua/ua/sud_dokaz_otrimaniy_bez_dozvolu_slidchogo_suddi_na_obshuk_gitla_e_nedopustimim/.
- Ruling of the Supreme Specialized Court of Ukraine regarding the consideration of civil of 12 May 2016. Proceedings no. 5-1193км16. Retrieved from https://protocol.ua/ua/vssu_operativna_zakupka_narkotichnih_zasobiv_moge_provoditis_lishe_u_razi_vnesennya_vidomostey_pro_zlochyn_dodr/9.

- Studennykov, S. (2019). The doctrine of “fruit of the poisonous tree”: How it is used by the courts. Retrieved from <https://sud.ua/ru/news/publication/154876-doktrina-plodiv-otruynogo-dereva-yak-yiyi-zastosovuyut-sudi>.
- Tertyshnyk, V. M. (2017). *Criminal proceedings of Ukraine*. 7th ed. K.: Alerta, 840 p.
- Tiutiunyk, V. V. (2015). *Institute of evidences’ admissibility as a guarantee to adoption of lawful and reasonable court decision: Thesis for the degree of candidate of legal sciences, specialty 12.00.09 «criminal process and criminalistics and forensics, investigation and search operations»*. National Law University, named after Yaroslav the Wise, Ministry of Education and Science of Ukraine. Kharkiv, 220 p.
- Tiutiunyk, V.V. (2013). The impact of the case law of the European Court of Human Rights on the development of the concept of admissibility of evidence in the criminal procedure of Ukraine. *Yryst Ukrainy*, 3 (24), 82-87. Kharkiv.
- Yakub, M. L. (1974). Problems of evidence assessment in the Soviet criminal procedure. *Vestnik Moskovskogo universitetata. Pravo*, 6, 20.
- Zhogin, N. V. (ed.) (1973). *The theory of evidence in the Soviet criminal procedure*. Moscow: Yurid. lit., 735 p.