

The Admissibility of Evidence Obtained in Contravention of the Right to Privacy in a Criminal Trial: A Comparative Study of Poland and Germany

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Abstract : International law and European regulations remain hardly silent about the admissibility of evidence obtained illegally in a criminal trial. However, Article 6 of the European Convention on Human Rights guarantees the right to a fair trial, it does not normalise a proceeding status of specified sources or means of proof outright. Therefore, it is the preserve of national legislation and national law enforcement authorities to decide on this matter. In most countries, especially in Germany and Poland, a rather complex normative approach to the issue of proof obtained in violation of the right to privacy is evident, which pursues in practise to many interpretive doubts. In Germany the jurisprudence has a significant impact within the range of the matter mentioned above. The Constitutional Court and the Supreme Court of Germany protect the right to privacy quite firmly - they ruled on inadmissibility of obtaining a proof in the form of a diary or a journal as a protection measure of constitutional guaranteed right. At the same time, however, the Supreme Court is not very convinced with reference to the issue of whether materials collected as a result of an inspection, call recordings or listening to the premises, which were carried out in breach of law, can be used in a criminal trial. Generally speaking, German courts indicate a crucial importance of the principle of Truth and the principle of proportionality, which both enable a judgement to be made as to the possibility of using an evidence obtained unlawfully. Comparing, in Poland there is almost no jurisprudence of the Constitutional Tribunal relating directly to the issue of illegal evidence. It is somehow surprising, considering the doctrinal analysis of the admissibility of using such proof in a criminal trial is performed in relation to standards resulted from the Constitution. Moreover, a crucial de lege lata legal provision, which enables allowing a proof obtained in infringement of the provisions in respect of criminal proceedings or through a forbidden act, is widely criticised within the legal profession and therefore many courts give it their own interpretation at odds with legislator's intentions. The comparison of two civil law legal systems' standards regarding to the admissibility of an evidence obtained in contravention of the right to privacy in a criminal trial, taking also into account EU legislation and judicature, is the conclusive aim of this article.

Keywords : criminal trial, evidence, Germany, right to privacy, Poland

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