UNLAWFULLY OBTAINED EVIDENCE

WHERE TO LOOK FOR STANDARDS?

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The subject of the taking of unlawfully obtained evidence, with few exceptions, is not strongly reflected in the jurisprudence of the Polish Constitutional Court, the Supreme Court and common courts. Until 2013, the Code of Criminal Procedure did not contain appropriate regulations that would provide grounds for refusing to take unlawfully obtained evidence. The changes introduced in 2016 significantly changed this situation by introducing the mechanism known as "reversed evidentiary prohibition", which, according to the intentions of the legislator, was to force courts to take evidence of a questionable nature.

This publication presents a selection of standards and rulings that may be helpful in opposing the introduction of unlawfully obtained evidence into proceedings. HFHR analyses indicate that these situations, contrary to intuitive perceptions, are relatively common in Polish criminal proceedings. Despite this, they are not strongly reflected in the jurisprudence of Polish courts.

We hope that such rulings will inspire lawyers to challenge the principles of admissibility of evidence. They will thus contribute to the development of relevant national and international standards, which in turn will foster the formation of Polish jurisprudence, give an impulse for requests for preliminary rulings based on European Union law and a wider recourse to applications to the European Court of Human Rights.

→ THE CONSTITUTION OF THE REPUBLIC OF POLAND

ARTICLE 2. THE REPUBLIC OF POLAND SHALL BE A DEMOCRATIC STATE RULED BY LAW AND IMPLEMENTING THE PRINCIPLES OF SOCIAL JUSTICE.

→ **Citizen's confidence in the state**

"[T]he principle of the protection of the citizen's confidence in the state and the law, also referred to as the principle of loyalty of the state to its citizens, is expressed in the making and application of the law in a manner that prevents the law from entrapping citizens and enables them to arrange their affairs in the confidence that they will not be exposed to legal consequences that they could not have foreseen at the time when they took their decisions and acted..."

Judgment of the Constitutional Court of 7 February 2001, case no. **K 27/00**, published in OTK 2001 no. 2, item 29.

→ **Citizen's confidence in the state, the requirement for the effectiveness of procedures controlling the use of special investigative operations**

"The belief that public authorities may gather information about a citizen in a secret manner in the course of operational activities (and thus also collect various rumours and slanders in addition to factual information) and then release such information in pursuit of political interests runs counter to the principle of the citizen's confidence in the state, which is of fundamental importance in a democratic state ruled by law. Therefore, the procedures of reviewing the purpose and scope of covert investigative methods must be rigorous and effective. It should also be noted that the limitation or even exclusion of judicial review of special investigative operations does not necessarily indicate, per se, a violation of the standard of a democratic state ruled by law.

Judgment of the Constitutional Court of 12 December 2005, **K 32/04**, OTK-A 2005, no. 11, item 132.

ARTICLE 7. THE ORGANS OF PUBLIC AUTHORITY SHALL FUNCTION ON THE BASIS OF, AND WITHIN THE LIMITS OF, THE LAW.

→ **The requirement to obtain evidence in accordance with the law**

"These guarantees [referred to in Articles 2, 7 and 45 (1) of the Constitution] undoubtedly include the necessity of resolving each case on the basis of evidence that is lawful, or prescribed by, or not contrary to, law within a given procedural framework."

Resolution of the Supreme Court of 30 November 2010, **III KK 152/10**, OSNKW 2011, no. 1, item 8.

→ **The requirement to obtain evidence in accordance with the law**

"The values protected by Articles 5 and 7 of the Constitution (protection of freedoms and rights of persons and citizens and the rule of law principle), and in particular the obligation, imposed by Article 9 of the Constitution, according to which the Republic of Poland must respect international law binding on it, precludes state authorities from using, in any form and for any purpose, information about citizens which is devoid of the attribute of lawfulness. Compliance with these values is guaranteed by the prohibition on the use of such knowledge, even indirectly, for the purposes of having it sanctioned at a later stage of the proceedings."

Judgment of the Court of Appeal in Białystok of 18 March 2010, **II AKA 18/10**, OSAB 2010, no. 1, item 32-39.

→ **Exceptions to the principle of freedom of evidence in criminal proceedings**
"In accordance with the principle of freedom of evidence applicable in the Polish criminal process, during the taking of evidence, it is permissible to carry out all evidentiary procedures, except for those covered by evidentiary prohibitions."

Judgment of the Supreme Court of 2 February 2016, **IV KK 346/14**, Biul.PK 2016, no. 1-3, item 79-88.

→ **Freedom of evidence in criminal proceedings**
"Criminal justice authorities do not have complete freedom in the selection and use of means, methods and means of taking evidence, as such activities are subject to many constitutional and statutory limitations, and some of them are absolutely prohibited (forbidden). ... It follows from the constitutional requirements applicable to the operation of criminal justice authorities that evidence must be collected in the manner specified in the Code of Criminal Procedure, which should be understood as necessitating evidentiary procedures to be aligned with their purpose and grounds, as well as with the subjective, objective and temporal limits specified in the laws on the procedure."

Judgement of the Court of Appeal in Wrocław of 11 September 2013., **II AKA 249/13**, LEX no. 1378924.

→ **Requirement of systemic interpretation to guide determination of the meaning of evidentiary prohibitions**
"The fact that the Code of Criminal Procedure, the Police Act and other acts do not explicitly provide for the procedural disqualification of such 'originally contaminated' evidence, as for example Article 171 (7) CCP does, makes no difference to the issue at hand [disqualification of evidence obtained in violation of Article 19 of the Police Act – author's note]. After all, the legislator does not presume the unlawful conduct of its officers and need not determine, in such a case, the consequences of such conduct in the field of the law of evidence as these can be unambiguously derived from the analysis of the entire system of law governing the principles of criminal liability of all citizens."

Resolution of the Supreme Court of 30 November 2010, **III KK 152/10**, OSNKW 2011, no. 1, item 8.

→ **Public interest and factual findings based on unlawfully obtained evidence**
"It is not possible to accept a situation in which officers of a democratic state, officers of public authorities, could collect evidence against the applicable law, while in accordance with the law, based on this evidence, citizens would be held criminally responsible. Each state is responsible for the unlawful activities of its secret services officers, and this responsibility cannot be waived by invoking the public interest in combating crime."

Decision of the Supreme Court of 19 March 2014, **II KK 265/13**, OSNKW 2014, no. 9, item 71.

ARTICLE 42 (2).

ANYONE AGAINST WHOM CRIMINAL PROCEEDINGS HAVE BEEN BROUGHT SHALL HAVE THE RIGHT TO DEFENCE AT ALL STAGES OF SUCH PROCEEDINGS. THIS PERSON MAY, IN PARTICULAR, CHOOSE A DEFENCE LAWYER OR AVAIL HIMSELF – IN ACCORDANCE WITH PRINCIPLES SPECIFIED BY STATUTE – OF A DEFENCE LAWYER APPOINTED BY THE COURT.

→ **Circumstances excluding freedom of expression and a vulnerability in view of the absence of a defence lawyer during the first questioning**
"The absence of a defence lawyer in cases where circumstances exist that hinder the defence (art. 79 § 2 CCP) during a suspect's first questioning in pre-trial proceedings, may not constitute an obstacle to the use

of testimony given in such conditions in court, provided that there were no other circumstances excluding the freedom of expression or an objectively existing vulnerability of the suspect."

Decision of the Supreme Court of 27 June 2017, **II KK 82/17**, LEX no. 2338030.

→ **Vulnerability and the absence of a defence lawyer during the first questioning**
"In view of the wording of Article 6 (1) of the 1950 European Convention on Human Rights read in conjunction with Article 6 (3) (c) of the Convention, the absence of a defence lawyer during a suspect's first questioning in pre-trial proceedings (Articles 300 and 301 CCP) does not, in itself, constitute an obstacle to the use of their testimony given in such conditions in court, provided that there is no objectively existing vulnerability of the suspect."

Resolution of the Supreme Court of 5 April 2013, **III KK 327/12**, OSNKW 2013, no. 7, item 60.

→ **Vulnerability and the absence of a defence lawyer during the first questioning**
"It is impossible to conclude from the judgments delivered by the European Court of Human Rights that the ECtHR's intends to impose a general requirement to ensure the presence of a defence lawyer at the first questioning of all suspects or otherwise preclude their statements from being used during the trial. It appears from the ECtHR judgments cited above that the Strasbourg Court is adamant about the presence of a defence lawyer in situations where a suspect is especially vulnerable, due to, e.g., their age or helplessness caused by social factors or the state of health (including a drug or alcohol addiction).

Judgment of the Court of Appeal in Katowice of 6 April 2017, **II AKA 15/17**, LEX no. 2343419.

→ **Vulnerability of the suspect, the absence of a defence lawyer during the first questioning and the admissibility of determining facts from evidence based on self-incrimination**
"Where the determination of a suspect's offence is based on self-incrimination in pre-trial proceedings which has not subsequently been upheld during examination proceedings by the court, a specific, enhanced standard for the assessment of such evidence should be maintained, in particular where the alleged offence is manslaughter and there is no other evidence directly pointing to the suspect's direct perpetration and, in addition, the suspect exhibits the characteristics of mental impairment (however slight) and where a professional defence lawyer did not participate in procedural steps conducted in the pre-trial proceedings. Since the Code of Criminal Procedure currently in force does not exclude the possibility of making factual findings based on a suspect's testimony containing self-accusatory statements made in the above-described conditions, doubts may arise as to the compliance with the standards resulting from the *nemo se ipsum accusare tenetur* principle, which should thoroughly be considered by the [trial] court. Any measure that would generally prohibit the making of such determinations remains in the realm of *de lege ferenda* proposals, which are perhaps worthy of consideration."

Decision of the Supreme Court of 23 June 2016, **II KK 39/16**, LEX no. 2080524.

ARTICLE 45 (1).

EVERYONE SHALL HAVE THE RIGHT TO A FAIR AND PUBLIC HEARING, WITHOUT UNDUE DELAY, BEFORE A COMPETENT, IMPARTIAL AND INDEPENDENT COURT.

→ **Foreseeability of judicial decisions as part of the right to a court**
"The right to a court, guaranteed by Article 45 (1) of the Constitution, also covers this particular aspect of this right, namely the possibility of predicting a favourable decision within the limits of the law. In other words, the right to a court understood as the right to access a court also includes this aspect, which combines with the possibility of independently assessing the chances of succeeding in a case being resolved

in the light of the applicable legal order. This, therefore, presupposes a degree of foreseeability of judicial decisions, without which the right to access a court would be de facto a fiction. Such an assessment of the formation of a future decision is based on the knowledge of substantive law and the jurisprudence related to it, which, in the opinion of the person concerned, are related to a given case.

Judgment of the Constitutional Court of 17 October 2000, **SK 5/99**, OTK 2000, no. 7, item 254.

→ **Procedural fairness and the application of Article 168a of the Code of Criminal Procedure**
"Article 168a CCP cannot constitute a legal basis for the taking of evidence obtained in violation of the rules of procedure or by means of a prohibited act if the taking of such evidence would render the trial unfair within the meaning of Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms."

Decision of the Supreme Court of 26 June 2019, **IV KK 328/18**, OSNKW 2019, no. 8, item 46.

→ **Evidence obtained in violation of constitutional provisions**
"Evidence may be considered inadmissible if it was obtained in violation of procedural rules or by means of a prohibited act which was accompanied by a violation of provisions of the Constitution of the Republic of Poland (e.g. Articles 30, 47, 49 or 51). In such a situation, the statutory restriction expressed by the phrase 'solely on the grounds that [a piece of evidence] was obtained in violation of the rules of procedure or by means of a prohibited act' (Article 168a CCP) does not apply."

Judgment of the Court of Appeal in Wrocław of 27 April 2017, **II AKA 213/16**, LEX no. 2292416.

→ **Interpretation of Article 168a of the Code of Criminal Procedure**
"The linguistic interpretation of Article 168a CCP in its version applicable since 15 April 2016 permits to state that the following classes of evidence are covered by an evidentiary prohibition: (1) evidence obtained in violation of rules of procedure in connection with the performance of official duties by a public official; (2) evidence obtained by means of a prohibited act referred to in Article 1 § 1 CC in connection with the performance of official duties by a public official; (3) evidence obtained by means of a prohibited act referred to in Article 1 § 1 CC and in violation of rules of procedure in connection with the performance of official duties by a public official; (4) evidence obtained by means of a prohibited act referred to in Article 1 § 1 CC, as a result of a manslaughter, intentionally committing bodily harm or unlawful detention."

Judgment of the Court of Appeal in Wrocław of 22 November 2017, **II AKA 224/17**, LEX no. 2464913.

→ **Unlawful police provocation and the fairness of proceedings**
"In a democratic state ruled by law, conducting a police sting operation without complying with basic legal requirements is an unlawful and illegal action that may not create any evidentiary effects because – as the Court has already indicated – unlawfully obtained operational materials may not be used as a basis for factual findings in a fair trial respecting the rules of Article 6 of the Convention."

Judgement of the Court of Appeal in Warsaw of 26 April 2013, **II AKA 70/13**, LEX no. 1322733.

ARTICLE 47. EVERYONE SHALL HAVE THE RIGHT TO LEGAL PROTECTION OF HIS PRIVATE AND FAMILY LIFE, OF HIS HONOUR AND GOOD REPUTATION AND TO MAKE DECISIONS ABOUT HIS PERSONAL LIFE.

→ **Use of evidence from illegal special investigative operations**

"An opportunity of unrestricted use of results of operational activities, including those illegal that would open a back door to incorporating such results into evidence would de facto legalise the unlawful activities of state authorities under the pretence of fighting crime, or, to put it more bluntly, it would open the way to the use of 'total' wire-tapping, collecting all possible information on citizens and then transforming this knowledge into ostensibly legal, procedural materials used in the fight against crime. Such an action would have nothing to do with the standards of a civilized state while presenting an extreme field for the abuses typical of totalitarian systems."

Judgment of the Court of Appeal in Białystok of 18 March 2010, **II AKA 18/10**, OSAB 2010, no. 1, items 32-39.

→ **Use of evidence from illegal covert investigative methods**

"A failure to comply with the statutory conditions of admissibility for the performance of special investigative operations set out in Article 19a of the Police Act of 6 April 1990 (Journal of Laws of 2007, No. 43, item 277, as amended) prevents the use of evidence so obtained in the course of criminal proceedings."

Resolution of the Supreme Court of 30 November 2010, **III KK 152/10**, OSNKW 2011, no. 1, item 8.

→ **Using evidence from illegal interception of telephone conversations**

"Since the interception of telephone conversations (Article 237 CCP) is one of the sensitive evidentiary procedures, namely those that interfere with freedoms and constitutional and Convention rights, including the right to privacy or the freedom of communication, the legal rules governing the manner of obtaining such evidence for the purposes of criminal proceedings must be applied strictly. One should thus agree with the conclusion of the adjudicating court that, if the outcome of the entire trial (the prosecutor has not, after all, offered any other evidence) depended on illegally obtained evidence, this would, first and foremost, interfere with Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, i.e. the right to a fair trial."

Decision of the Court of Appeal in Poznań of 29 January 2020, **II AKZ 613/19**, LEX no. 3027953.

→ **Evidence obtained outside the limits of covert investigative methods**

"Since the 2006 Central Anti-corruption Bureau Act requires that both the person concerned and the act or acts in respect of which covert investigative methods are intended to be applied must be indicated already in the Bureau's application to a court for an order authorising the use of such methods, they may become an admissible and lawful interference in the sphere of freedom exclusively within the subjective and objective limits specified in the court order. Any evidence obtained from the covert investigative methods ordered by the court but applied outside these limits, thus in violation with the Act, is not legally obtained evidence."

Judgment of the Court of Appeal in Wrocław of 27 April 2017, **II AKA 213/16**, LEX no. 2292416.

→ **Evidence obtained outside the limits of covert investigative methods and Article 168a of the Code of Criminal Procedure**

"Article 168a CCP, which governs the introduction of illegally obtained evidence into the trial, refers only to evidence obtained in violation of the rules of procedure or by means of a prohibited act. This regulation does not constitute a basis for the procedural use of data obtained from covert investigative methods

employed in violation of conditions for the procedural use of such data set out in the Police Act and originating from substantive law."

Decision of the Supreme Court of 26 June 2019, **IV KK 328/18**, OSNKW 2019, no. 8, item 46.

→ **The requirement to obtain information indicating the risk of commission of a criminal offence and the performance of special investigative operations**

"It follows directly from the Constitution of the Republic of Poland and the principles of a democratic state ruled by law that the operational surveillance of citizens performed in order to obtain materials against them, which are to subsequently constitute evidence in criminal proceedings is inadmissible as unlawful and illegal unless there is previously obtained information giving rise to an assumption or even a conjecture that a particular person has already committed or is willing to commit a crime. A democratic state by its very nature may not test the honesty of its citizens or check their honesty in a random and blind manner by using clandestine and deceitful methods. Such conduct is a feature and practice of a totalitarian state."

Judgement of the Court of Appeal in Warsaw of 26 April 2013, **II AKA 70/13**, LEX no. 1322733.

→ **The requirement to obtain information indicating the risk of commission of a criminal offence and the performance of special investigative operations**

"Secret activities taking the form of audio-video recording, performed on the basis of art. 14 (1) (6) of the Central Anti-corruption Bureau Act of 9 June 2006 (Journal of Laws of 2006, No. 104, item 708, as amended), already directed at a particular person and performed in order to obtain evidence of their participation in an offence, may be admissible only if the services have at least some, however slight, information indicating that the person may have committed a criminal offence; this results from the wording of Article 14 (8) of the Act which indicates the requirement of obtaining information confirming the offence."

Decision of the Supreme Court of 19 March 2014, **II KK 265/13**, OSNKW 2014, no. 9, item 71.

→ **Possibility of using materials from special investigative operations to prosecute "non-eligible" criminal offences**

"The application and use of materials obtained during operational wire-tapping as evidence in the course of operational procedures and during the trial is allowed only in relation to the offences listed in Article 19 (1) of the Police Act. If these materials have not provided grounds for the initiation of pre-trial proceedings concerning the commission of one of the offences listed in this provision, the materials must be destroyed in the manner provided for in Article 19 (17) of the Police Act and may not be used in any other proceedings."

Resolution of the Supreme Court of 15 November 2005, **SNO 57/05**, LEX no. 471928.

→ **Article 168b and the "non-eligible" offences**

"The expression 'another offence prosecuted ex officio or a fiscal offence other than an offence covered by a covert investigative method order' used in Article 168b CCP refers only to those offences that may be approved by the court as eligible to be prosecuted with the use of covert investigative methods including those referred to in Article 19 (1) of the Police Act of 6 April 1990 (Journal of Laws of 2017, item 2067, a consolidated text with further amendments)."

Resolution of the Supreme Court (a seven-judge panel) of 28 June 2018, **I KZP 4/18**, OSNKW 2018, no. 8, item 53.

→ **Further use of materials from special investigative operations**

"In a democratic state ruled by law, it is not necessary to store information about citizens obtained in the course of operational activities based on the assertion that this information is potentially useful. Such

information may only be used in connection with specific proceedings conducted under a law that allows restrictions of liberty for reasons of national security and public order. Police interference with the sphere of civil rights and freedoms, related to the operational activities undertaken in the public interest, may not be unrestricted."

Judgment of the Constitutional Court of 12 December 2005, **K 32/04**, OTK-A 2005, no. 11, item 132.

→ **Guarantees against the abuse of special investigative operations**

"Although clandestine operational activities conducted by officers of relevant services, including the Central Anti-corruption Bureau, are not in principle contrary to the 1956 European Convention on Human Rights and Fundamental Freedoms and the 1997 Constitution of the Republic of Poland, they must be accompanied by adequate safeguards to prevent abuse. It is a duty of the court conducting a criminal trial to review the rationale and manner of a provocation conducted by such officers, including that taking the form of a controlled transfer of a financial advantage, especially when evidence obtained from the provocation has become the basis for the conviction; a detailed analysis must be made both of the reasons for the clandestine provocation and of whether the officers behaved passively and to what extent they engaged in the provocation to accept a financial benefit, and whether they exerted pressure on the persons provoked. If they took an active stance and the offence would not have been committed by provoked persons but for the actions of the agents [involved in provocation], such a state of affairs constitutes a violation of the right to a fair trial protected by Article 6 (1) of the European Convention on Human Rights and Fundamental Freedoms. As a result, evidence obtained as a result of the provocation must be considered as having been unlawfully obtained."

Decision of the Supreme Court of 19 March 2014, **II KK 265/13**, OSNKW 2014, no. 9, item 71.

→ **Guarantees against the abuse of special investigative operations**

"In the light of the Constitution, the services responsible for security and public order cannot be considered as having autonomy in terms of operational activities. It is therefore not possible to exempt operating activities from any control by invoking the requirement of the effectiveness of such activities. Therefore, this type of activity is not exempt from the constitutional constraints imposed on all authorities that encroach on fundamental rights and freedoms of individuals, especially since, when undertaking special investigative operations, police bodies secretly enter the sphere of civil rights and freedoms as required by the purpose of these activities. Owing to this type of specificity, the aforementioned activities must be subject to a well-designed system of effective control which cannot be merely a facade."

Judgment of the Constitutional Court of 12 December 2005, **K 32/04**, OTK-A 2005, no. 11, item 132.

→ CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

ARTICLE 3. NO ONE SHALL BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

→ **ECtHR (Grand Chamber) judgment of 11 July 2006, *Jalloh v. Germany*, no. 54810/00**
Obtaining material evidence by compulsory administration of emetic agents. A violation of the prohibition of inhuman and degrading treatment. The impact of a violation of the prohibition of inhuman and degrading treatment on the fairness of proceedings. The limits of the privilege against self-incrimination.

→ **ECtHR (Grand Chamber) judgment of 1 June 2010, *Gäfgen v. Germany*, no. 22978/05**
A suspect's testimony obtained as a result of the threat of violence by an officer. The impact of evidence obtained in violation of the prohibition of inhuman treatment on the fairness of proceedings. Exclusion of evidence obtained in violation of Article 3 of the Convention.

→ **ECtHR judgment of 5 November 2020, *Ćwik v. Poland*, no. 31454/10**
Evidence obtained in violation of the prohibition of torture by persons other than state officials. The utilisation of statements obtained in violation of the prohibition of torture and their impact on the fairness of proceedings.

ARTICLE 6. EVERYONE IS ENTITLED TO A FAIR AND PUBLIC HEARING WITHIN A REASONABLE TIME BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL ESTABLISHED BY LAW...

→ **ECtHR (Grand Chamber) judgment of 18 December 2018, *Murtazaliyeva v. Russia*, application no. 36658/05**
The role of national courts in the procedure concerning the admission of evidence. The procedural standard for the admission of evidence from witness testimony (requirement that the request for evidence should be sufficiently reasoned in relation to the subject matter of the proceedings; requirement that the court should consider the relevance of the evidence in question and sufficiently justify its decision not to admit evidence from witness testimony; the impact of the refusal to admit the evidence from witness testimony on the fairness of proceedings).

→ **ECtHR (Grand Chamber) judgment of15 December 2011, *Al-Khawaja and Tahery v. the United Kingdom*, nos. 26766/05 and 22228/06**
The right to examine a prosecution witness. Impact of the failure to examine the prosecution witness on the fairness of the proceedings (assessment of whether there was a justifiable reason for not hearing the witness; relevance of the witness's testimony to the outcome of the proceedings; assessment of counterbalancing factors to compensate for the lack of opportunity to examine the witness, including the requirement for a careful assessment of such evidence)

→ **ECtHR (Grand Chamber) judgment of 13 September 2016, *Ibrahim and Others v. the United Kingdom*, nos. 50541/08, 50571/08, 50573/08**
Access to a defence lawyer provided before the first questioning in the case. The requirement to assess if there were compelling reasons to restrict the right of access to a defence lawyer. The impact of a restriction on access to a defence lawyer on the fairness of proceedings. The requirement of notification of the right to a lawyer and the right to remain silent.

→ **ECtHR judgment of 18 February 2010, *Aleksandr Zaichenko v. Russia*, no. 39660/02**
The requirement to inform a suspect of the right to silence and not to incriminate oneself. The impact of a breach of this requirement on the fairness of proceedings.

→ **ECtHR judgment of 14 October 2014, *Baytar v. Turkey*, no. 45440/04**
Requirement of access to an interpreter. Obtaining a suspect's testimony without the assistance of an interpreter.

→ **ECtHR judgment of the of 19 November 2019, *Razvozzhayev v. Russia and Ukraine* and *Udaltsov v. Russia*, nos. 75734/12, 2695/15 and 55325/15**
Admissibility of evidence from the testimony of a co-defendant whose case was disjoined and referred to a separate plea-bargaining procedure.

→ **ECtHR (Grand Chamber) judgment of 5 February 2008, *Ramanauskas v. Lithuania*, no. 74420/01**
Rules applicable to a police provocation.

ARTICLE 8. EVERYONE HAS THE RIGHT TO RESPECT FOR HIS OR HER PRIVATE AND FAMILY LIFE, HOME AND CORRESPONDENCE...

→ **ECtHR (Grand Chamber) judgment of 10 March 2009, *Bykov v. Russia*, no. 4378/02**
Telephone interception. The impact of a violation of Article 8 of the Convention on the fairness of the proceedings in the case. Procedural requirements for the taking of such evidence.

→ **ECtHR judgment of 25 February 2010, *Lisica v. Croatia*, no. 20100/06**
Admissibility of evidence from a search carried out without informing the defence lawyer and without ensuring the presence of the defence lawyer or the suspect. The impact of such evidence on the fairness of proceedings.

→ EUROPEAN UNION LAW

→ **Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings**

ART. 3 Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.

ARTICLE 10 (1) Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.

→ **Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty**

ARTICLE 3 (1) Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

ARTICLE 12 (1) Member States shall ensure that suspects or accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of the rights under this Directive.

→ **Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings**

ARTICLE 3 (1) Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

A) the right of access to a lawyer;

B) any entitlement to free legal advice and the conditions for obtaining such advice;

C) the right to be informed of the accusation (...);

D) the right to interpretation and translation;

E) the right to remain silent.

→ **Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings**

ARTICLE 2 (1) Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

ARTICLE 2 (2) Member States shall ensure that, where necessary in order to safeguard the fairness of the proceedings, interpretation is available for the communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing, appeal or other procedural applications.

→ **Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.**

ART. 4 (1) Member States shall ensure that suspects and accused persons who do not have sufficient means to cover the costs of legal assistance have the right to legal aid when the interests of justice so require.

→ **Charter of Fundamental Rights of the European Union**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.