

On the Prohibition of Evidence Illegally Obtained by Private Parties

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Abstract

This article explores the issue of excluding evidence obtained by private individuals through illegal means in criminal proceedings in mainland China. Although the Criminal Procedure Law establishes provisions for evidence collection by judicial authorities and the exclusion of illegally obtained evidence, it does not explicitly address the legality or admissibility of evidence collected by private individuals. In practice, private evidence collection often infringes on the legal rights of the individuals involved, creating challenges for judicial authorities when handling such evidence. This paper proposes the introduction of the “balancing of legal interests” theory, which suggests determining the admissibility of evidence based on the extent to which the evidence collection infringes upon the rights of the individual and balancing the pursuit of truth with procedural justice in the case. Through this mechanism, the paper aims to provide clear guiding principles for judicial practice, safeguard legal rights, and ensure fairness and efficiency in the judicial process.

Keywords

Private Evidence Collection; Illegally Obtained Evidence; Exclusionary Rule; Balancing of Legal Interests

1. Introduction

In the criminal justice system of mainland China, the legality of evidence is pivotal to ensuring fair trials. While the Criminal Procedure Law delineates procedures for evidence collection by judicial authorities and the exclusion of illegally obtained evidence, it lacks explicit provisions regarding the admissibility of evidence gathered by private individuals. With the advancement of technology and heightened legal awareness among the public, private evidence collection has become increasingly prevalent, particularly in areas such as private investigations and corporate rights protection. However, these practices often infringe upon the legal rights of the individuals involved, such as privacy and reputation, posing significant challenges for judicial authorities in determining the admissibility of such evidence. Currently, the

absence of uniform standards in judicial practice leads to inconsistent rulings in similar cases, thereby undermining the credibility of the justice system. To address this issue, this paper proposes the adoption of the “balancing of legal interests” theory, which involves assessing the extent of infringement on the rights of the individuals from whom the evidence is obtained, in conjunction with the necessity of uncovering the truth in criminal cases. The aim is to establish clear guidelines for judicial practice, safeguard legal rights, and uphold the fairness and efficiency of the criminal justice system.

2. The Legal Background and Practical Dilemmas of Illegally Obtained Evidence by Private Parties

2.1. The Concept of Private Illegal Evidence Collection and Legal Gaps

Under the current legal framework in mainland China, the definition and regulation of “illegally obtained evidence” primarily target evidence collected by state judicial authorities during investigation, prosecution, and trial. Article 54 of the Criminal Procedure Law provides for the exclusion of illegal evidence, but its application is limited to official organs and does not clearly extend to evidence gathered by private individuals. With the development of society, it has become increasingly common for victims, prosecutors, or other private parties to collect evidence independently—often by means such as surreptitious recording, surveillance, or unauthorized access. Although such practices may help uncover the facts of a case, they frequently infringe upon the rights of others, such as privacy, personal liberty, and the inviolability of residence. Due to the absence of clear legal standards, the legitimacy, regulation, and admissibility of evidence obtained through such means remain controversial in legal theory and inconsistent in judicial practice.

2. Challenges of Private Evidence Collection in Judicial Practice

In judicial proceedings, the use of privately collected evidence has become increasingly frequent, particularly in cases where evidence is difficult to obtain through formal procedures—such as those involving sexual assault, domestic violence, or occupational crimes. However, whether such evidence is legally obtained, whether it infringes upon others’ rights, and whether it should be admitted into court often become central issues during trial. Some courts prioritize factual truth and accept illegally obtained private evidence, while others emphasize procedural justice and the protection of individual rights, and therefore choose to exclude such evidence. This inconsistency in judicial reasoning undermines legal predictability and weakens judicial authority. More importantly, in the absence of a unified standard, the tacit acceptance or even encouragement of such practices may lead to the abuse of private “quasi-investigative” behavior, thereby undermining social trust and the rule of law. Thus, it is imperative to introduce a balancing theory—such as the “doctrine of legal interest balancing”—to establish a normative

framework that reconciles the pursuit of truth with the protection of procedural rights, thereby offering clearer guidance for judicial practice.

3. Theoretical Foundation of the Benefit Balance Theory and the Exclusion of Illegally Obtained Evidence

3.1. The Basic Concepts and Framework of the Benefit Balance Theory

The Benefit Balance Theory originates from the concept of balancing conflicting interests in jurisprudence, emphasizing the need to reasonably weigh different legal interests in judicial rulings. In criminal justice, the core of the Benefit Balance Theory is to balance various legal interests involved in a case, such as the pursuit of the truth, the protection of the parties' fundamental rights, and the safeguarding of public interests. When handling illegally obtained evidence, the court must not only consider the legality of how the evidence was obtained, but also evaluate whether this evidence plays a crucial role in revealing the truth of the case and whether excluding it would undermine judicial fairness and social equity.

According to the Benefit Balance Theory, in the exclusion of illegally obtained evidence, judicial authorities should weigh the following interests: first, the infringement caused by the illegality of the evidence, such as violations of personal privacy rights, property rights, and other fundamental rights; second, the contribution the evidence makes to revealing the truth of the case, especially in complex or significant cases where illegal evidence might reveal crucial leads in criminal investigations; and finally, the consequences of excluding the evidence, particularly when excluding the evidence may lead to the case being inadequately tried, thus hindering judicial fairness. Therefore, the Benefit Balance Theory provides a pathway for finding a reasonable balance between conflicting legal interests, making it particularly suitable for addressing issues related to the exclusion of illegally obtained evidence.

3.2. Application and Challenges of the Benefit Balance Theory in the Exclusion of Illegally Obtained Evidence

In practical application, the Benefit Balance Theory helps courts make more careful and flexible judgments in complex cases involving the exclusion of evidence. For example, when faced with illegally obtained evidence, the court should comprehensively consider the extent to which the method of obtaining the evidence infringes upon the defendant's fundamental rights, the importance of the evidence in revealing the truth of the case, and the potential judicial injustice caused by excluding the evidence. Particularly in cases involving serious crimes or public safety concerns, the Benefit Balance Theory provides a more flexible framework for courts, enabling them to assess the admissibility of evidence more reasonably in different circumstances.

However, the application of the Benefit Balance Theory in Mainland China's judicial

practice still faces certain challenges. Firstly, the use of the theory depends on the flexibility of judicial judgment and discretionary power, yet China's judicial system has certain procedural rigidity and inconsistent judgments; secondly, there may be differences in the professional competence of judicial personnel and their understanding of the Benefit Balance Theory, making it difficult to apply a unified standard in specific cases. Therefore, while the Benefit Balance Theory provides a valid theoretical basis for the exclusion of illegally obtained evidence, its practical application requires enhanced judicial training, clearer legal standards, and improved judicial interpretations, thus better utilizing the theory's benefits.

4. Practical Application of the Balancing Theory in China's Criminal Justice

4.1. Divergent Judicial Approaches to Privately Illegally Obtained Evidence

In judicial practice, the standards for determining the admissibility of privately obtained illegal evidence vary significantly. While criminal procedure emphasizes lawful evidence collection and procedural justice, in reality, key evidence is often gathered by parties or their relatives outside official investigations. Such privately collected evidence may lack legal authorization but can be critical in determining the truth. For instance, in the widely publicized Yu Huan Case, the defendant's mother recorded a video showing violent debt collection, which was later accepted by the court as crucial evidence for sentencing, despite being privately obtained. The court did not exclude the evidence due to the absence of official authorization, demonstrating a pragmatic attitude toward evidentiary truth in extreme situations.

Conversely, in cases like the Wuxi Hidden Camera Case, courts have excluded evidence acquired through covert surveillance in private residences, citing severe invasions of privacy and the availability of alternative evidence. These inconsistent rulings reveal a lack of unified judicial standards regarding privately obtained evidence and suggest that courts often engage in implicit value balancing between procedural irregularity and evidentiary importance—a core concept of the balancing theory.

4.2. Balancing Factual Truth and Procedural Fairness

In complex criminal cases, courts often face a dilemma between uncovering the factual truth and maintaining procedural integrity. In one example involving a drunk driving incident in Changsha, the victim's family, dissatisfied with police inaction, independently retrieved footage from the car's dashboard camera. Although this evidence was obtained without official permission, it clearly captured the suspect fleeing the scene while intoxicated. The court deemed the evidence irreplaceable and found no significant infringement on the defendant's rights, thus admitting it into trial.

This approach reflects a judicial preference for substantive justice in cases where procedural flaws are minor, and the evidence is central to the truth. The balancing the

ory becomes particularly relevant here, offering a framework to weigh the severity of rights violations against the probative value of evidence. This pragmatic approach helps achieve both legal certainty and social fairness, even in the absence of explicit statutory guidance.

4.3. Balancing Theory as a Guiding Principle in Judicial Reasoning

Although not formally codified in China's Criminal Procedure Law, the balancing theory is increasingly guiding judicial reasoning in cases involving contested evidence. For example, in a Shanghai Public Official Surveillance Case, the defendant installed a recording device in a meeting room to document illegal instructions from a superior. Despite the lack of consent, the court found the recording to be clear, time-stamped, and directly tied to the public interest. It ruled the evidence admissible on the grounds that the procedural violation was outweighed by its high probative value and the public significance of the misconduct.

This trend shows that judges are moving beyond rigid formalism and applying a more nuanced evaluation of rights infringements and evidentiary necessity. As a result, the balancing theory has become an implicit rule in Chinese judicial practice, shaping evidentiary assessment in the absence of legislative clarity.

5. Institutional Recommendations for Regulating Illegally Obtained Evidence by Private Parties in Mainland China

5.1. Establishing a Classification-Based Review System for Private Evidence Collection

Currently, China's criminal procedure system provides clear rules on the exclusion of illegally obtained evidence by judicial authorities, but it remains silent on the regulation of unlawful evidence collection by private individuals. This legal vacuum has led to inconsistent judicial standards and divergent court decisions in practice. To address this issue, a classification-based review system should be established, grounded in the principles of degree of infringement, legitimacy of purpose, and evidentiary value.

Private evidence collection can be divided into three categories. First, seriously illegal conduct, such as trespassing into homes, eavesdropping on private communications, or coercive extraction of information, which severely infringes upon constitutional rights. Second, mildly infringing conduct, such as unauthorized audio recording or video surveillance in public spaces, which involves limited infringement. Third, reasonably necessary conduct, which may occur under urgent circumstances for purposes such as self-protection or legal defense.

Different regulatory pathways should be designed for each category: evidence from seriously illegal conduct should be excluded outright; mildly infringing conduct may be evaluated under a relative exclusion standard; and reasonably necessary conduct may be admitted with caution. This classification system enhances the

predictability of judicial decisions and provides a rational institutional response to the current uncertainties surrounding private evidence collection.

5.2. Introducing a Judicial Review Model Based on the Balancing of Legal Interests

Institutional design must be accompanied by a practical and operable judicial model. This chapter proposes a “balancing of legal interests” framework for evaluating the admissibility of evidence obtained through private means. This model consists of three core criteria: (1) degree of rights infringement, assessing whether the evidence collection seriously violates constitutional rights such as privacy and human dignity; (2) evidentiary importance and substitutability, considering whether the evidence is critical to the case and whether it can be obtained by lawful alternatives; and (3) intent and method of the collector, evaluating whether the collector acted out of legitimate purposes and used the least intrusive means possible.

Rather than mechanically applying a rigid admissibility rule, this model enables courts to perform a nuanced balancing of procedural justice and truth-finding. In increasingly complex criminal cases involving private surveillance and digital data, the model can enhance the rationality and transparency of judicial discretion. It also contributes to the development of consistent judicial practices that can inform and shape future legislation.

5.3. Promoting Legislative Reforms and Unified Judicial Interpretations

Ultimately, addressing the issue of private illegal evidence collection requires legislative clarification and institutionalization. The Criminal Procedure Law should be amended to include specific provisions on “illegal evidence collection by non-state actors,” clearly defining its legal nature, categories, review procedures, and standards for exclusion. Evidence obtained through serious rights violations by private individuals should be categorically excluded, and courts should be required to conduct procedural reviews with clear burdens of proof and judicial responsibilities.

In the interim, the Supreme People’s Court should issue judicial interpretations or guidelines addressing common forms of private evidence collection, such as audio recordings, surveillance footage, and social media evidence. These interpretations should provide specific thresholds for admissibility based on the degree of infringement. In addition, capacity-building efforts such as case databases, judicial training, and model decisions should be implemented to enhance the ability of courts—especially at the grassroots level—to handle such evidence consistently and lawfully.

Furthermore, China may draw upon comparative experiences to establish a collaborative mechanism involving legislators, judges, academics, and the public, in order to promote a normative, systematized, and procedurally sound approach to regulating private evidence collection in criminal proceedings.

6. Conclusion

In the context of mainland China's criminal justice system, the admissibility of evidence obtained through illegal private means has become an increasingly prominent issue. Due to the absence of a systematic legal framework governing such behavior, judicial practice often lacks consistent standards, which undermines both procedural stability and the protection of individual rights. This regulatory gap highlights the need for a theoretically sound and practically operable mechanism to address the admissibility of privately obtained evidence.

The introduction of a "balancing of legal interests" approach offers a rational path for harmonizing factual truth and procedural fairness. By evaluating the extent of rights infringement, the subjective intent of the collector, and the necessity or substitutability of the evidence, courts can adopt a more nuanced and flexible method for determining admissibility. At the same time, legislative efforts should focus on filling normative gaps, establishing clear classification and review standards, and promoting unified judicial practice. Through these measures, the criminal justice system can better safeguard individual rights while enhancing fairness, consistency, and legal certainty in the handling of privately obtained evidence.

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