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Research on the Standard of Proof in the Procedure for Excluding Illegal Evidence

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Abstract

As a key mechanism to safeguard judicial justice and curb extortion of con-fes-sions by torture, the setting and application of the standard of proof in the pro-cedure for excluding illegal evidence directly influence the realization of proce-dural value. China's Criminal Procedure Law and related judicial interpre-tations have established a proof system centered on the "duality standard," but in judi-cial practice, problems such as vague initiation standards, unclear allocation of the prosecution's burden of proof, and the absence of typological standards for evidence still exist. Based on the theory of the correlation between the standard of proof and the burden of proof, this paper systematically discusses the "rea-sonable doubt" standard for the defense to initiate the procedure and the prose-cution's dual standards of "confirming illegality" and "inability to exclude ille-gality" by analyzing the logical transformation of the object of proof and com-parative legal experience. Combining typical cases such as the "Zhang Guoxi Bribery Case" and the "Guo Zongkui Drug Trafficking Case," it reveals the prac-tical dilemmas in the application of the standard of proof in current judicial practice, and proposes improvement paths from four dimensions: clarification of operational guidelines, refinement of application rules, strengthening of ty-pological research, and enhancement of judicial cognition, so as to provide the-oretical support for the standardized operation of the procedure for excluding illegal evidence.

Keywords

Exclusion of Illegal Evidence; Standard of Proof; Duality Standard; Reasonable Doubt; Criminal Procedure

1. Basic Theories of the Standard of Proof in the Procedure for Excluding Illegal Evidence

1.1. The Correlation between the Standard of Proof and the Burden of Proof

The standard of proof and the burden of proof constitute the core binary structure of the criminal evidence system, and the two exhibit a close interactive relationship in the procedure for excluding illegal evidence. The burden of proof addresses the question of "who bears the burden of producing evidence," while the standard of proof clarifies the requirement of "to what extent the evidence must be produced," together constructing the logical foundation for the operation of the procedure. From a jurisprudential perspective, the setting of the standard of proof must be premised on the allocation of the burden of proof - when the defense bears the initial burden of proof to initiate the procedure, its standard of proof is usually lower than the prosecution's burden of persuasion; conversely, the prosecution needs to reach a higher degree of proof to persuade the fact-finder in order to refute the defense's claim. Article 56, Paragraph 2 of China's Criminal Procedure Law stipulates: "Parties and their defenders or litigation representatives have the right to apply to the people's court for the exclusion of evidence collected by illegal methods in accordance with the law. When applying for the exclusion of evidence collected by illegal methods, relevant clues or materials shall be provided." This provision clarifies the initial burden of proof of the defense, while Article 57 requires that "the people's procuratorate shall prove the legality of evidence collection," establishing the main burden of proof of the prosecution, forming a hierarchical structure of "low-threshold initiation - high-standard proof" in the standard of proof.

1.2. The Logical Transformation of the Object of Proof in the Procedure for Excluding Illegal Evidence

The object of proof in the procedure for excluding illegal evidence has undergone a logical transformation from "the legality of evidence" to "the legality of the procedure". In traditional criminal proof, the object of proof focuses on the facts of the constitutive elements of a crime; while in the procedure for excluding illegal evidence, the object of proof shifts to the legality of evidence collection behavior, that is, whether the investigation organ obtained evidence by illegal methods such as extortion of confessions by torture, threats, and illegal restriction of personal freedom. This transformation reflects the balancing value of procedural justice against substantive justice - when the illegality of the evidence collection procedure is sufficient to negate the validity of the evidence, even if the evidence is substantially true, it should be excluded. The particularity of the object of proof determines the particularity of the standard of proof: on the one hand, when the defense initiates the procedure, it only needs to prove "the possibility of illegal evidence collection," without reaching the degree of "clear facts and sufficient evidence"; on the other hand, in order to prove the legality of evidence, the prosecution needs to prove through evidence that the investigation behavior complies with the statutory procedure, and its standard of proof needs to reach the degree of eliminating reasonable doubt. This logical transformation requires that the setting of the standard of proof takes into account both procedural efficiency and rights protection, so as to avoid the procedure for excluding illegal evidence being a mere formality due to too high a standard of proof, or affecting the seriousness of judicial proof due to too low a standard.

2. The Standard of Proof for the Defense to Initiate the Procedure for Excluding Illegal Evidence

2.1. The Jurisprudential Orientation of the Initiation Standard

The core of the "reasonable doubt" standard lies in that the clues or materials provided by the defense need to have "specificity", which can enable the fact-finder to form a preliminary presumption of "the possibility of illegal evidence collection". The specificity requirements include the following elements: the subject of illegal evidence collection, the name or unit of the investigating personnel who implemented the illegal evidence collection behavior needs to be specified to facilitate the court's verification; time and place, the approximate time range and specific place (such as the interrogation room of a certain detention center) where the illegal evidence collection behavior occurred need to be clarified; the mode of behavior, the specific means of illegal evidence collection need to be described, such as the way of extortion of confessions by torture (beating, electric shock, etc.), the content of threats, etc.; the damage consequences, such as the specific manifestations of physical injury and mental trauma, or the contradictions between the content of the confession and the facts. Taking the "Zhang Guoxi Bribery Case" as an example, the defense proposed that Zhang Guoxi was extorted by torture during the interrogation, and provided clues such as photos of the scars on his wrist and the difference between the medical examination records when entering the detention center and the injury condition when leaving the detention center. These materials specifically pointed to the time (during detention), place (detention center), method (beating) and consequences (physical scars) of illegal evidence collection, meeting the specificity requirements and prompting the court to initiate the procedure for excluding illegal evidence.

2.2. The Relevance and Credibility of Evidence Materials

China's In addition to specificity, the clues or materials provided by the defense also need to be "relevant" to the "illegal evidence collection behavior" and have basic credibility. The relevance requires that the clues or materials can directly or indirectly prove the existence of the illegal evidence collection behavior, rather than irrelevant subjective guesses. The credibility judgment needs to be comprehensively considered in combination with factors such as the background of the case and the consistency of the defense's statement. For example, in the "Guo Zongkui Drug Trafficking Case", the defense claimed that the defendant's confession in the investigation stage was obtained by extortion of confessions by torture, and provided the testimony of fellow detainees, proving that the defendant had multiple bruises on his body when entering the detention center. The testimony of the fellow detainees was mutually confirmed with the defendant's statement, which had high credibility, and the court accordingly determined that the defense had completed the burden of proof to initiate the procedure.

3. The Duality Standard for the Prosecution to Prove the Legitimacy of Evidence

3.1. The Legislative Logic of the Duality Standard

China's "duality standard" for the prosecution to prove the legality of evidence originates from the provision of Article 57 of the Criminal Procedure Law: "In the process of court investigation into the legality of evidence collection, the people's procuratorate shall prove the legality of evidence collection. If the existing evidence materials cannot prove the legality of evidence collection, the people's procuratorate may request the people's court to notify the relevant investigating personnel or other personnel to appear in court to explain the situation; the people's court may notify the relevant investigating personnel or other personnel to appear in court to explain the situation. The relevant investigating personnel or other personnel may also request to appear in court to explain the situation. Upon notification by the people's court, the relevant personnel shall appear in court." This provision establishes the dual requirements for the prosecution to prove the legality of evidence: positive proof: the prosecution needs to take the lead in proving the legality of evidence collection through existing evidence (such as interrogation records, audio and video recordings, physical examination records, etc.); negative counter-evidence: when the existing evidence cannot fully prove the legality, the prosecution needs to further supplement evidence (such as notifying the investigating personnel to appear in court to testify) to exclude the possibility of illegal evidence.

The legislative logic of the duality standard lies in balancing the value goals of cracking down on crimes and protecting human rights - it not only requires the prosecution to bear a strict burden of proof but also gives it an opportunity to supplement the proof, so as to avoid the exclusion of key evidence due to the dispute over the legality of evidence affecting the conviction and sentencing.

3.2. The Connotations of "Confirming Illegality" and "Inability to Exclude Illegality"

The duality standard is specifically manifested as the judgment standards of two proof results of "confirming illegality" and "inability to exclude illegality": the standard of "confirming illegality": when the court can be convinced that the investigating personnel have illegal evidence collection behavior (such as proving the fact of extortion of confessions by torture through evidence) after investigation, it shall determine that the evidence is illegal and exclude it;

The standard of "inability to exclude illegality": even if there is no direct evidence to prove the existence of illegal evidence collection behavior, but the existing evidence cannot form a chain of evidence to exclude the possibility of illegal evidence collection (such as the prosecution failing to provide the interrogation audio and video of the key period), it shall also determine that the legality of the evidence is in doubt, so as to exclude the evidence.

These two standards reflect different degree requirements for the proof of evidence legality: "confirming illegality" belongs to positive fact determination and needs to reach a higher degree of proof; "inability to exclude illegality" belongs to negative possibility judgment and only needs to prove that the reasonable doubt of illegal evidence collection has not been eliminated.

3.3. The Specific Application of the Duality Standard

The standard of proof for the legality of verbal evidence (such as the defendant's confession and witness testimony) needs to reach a higher standard, because verbal evidence is easily distorted by the method of evidence collection. When the prosecution proves the legality of verbal evidence, it needs to comprehensively use the following evidence:

Full-process synchronous audio and video recording: This is the core evidence to prove the legality of interrogation, especially for cases that may be sentenced to life imprisonment, death penalty, or other major cases, the law clearly requires full-process audio and video recording. If the audio and video recording is edited, interrupted, or cannot be played, and the prosecution cannot give a reasonable explanation, it shall be determined that the possibility of illegal evidence collection cannot be excluded.

Interrogation records and physical examination records: Whether there is the defendant's signature confirmation of voluntary confession in the interrogation record, and whether the physical examination record of the detention center records the physical condition when entering the detention center, which can be mutually confirmed with the defendant's claim of extortion of confessions by torture.

Investigating personnel appearing in court to testify: When objective evidence such as audio and video recordings has flaws, it is an important way to supplement the proof for the investigating personnel to appear in court to explain the interrogation process and accept cross-examination by the defense.

In the "Zhang Guoxi Bribery Case", the prosecution provided part of the interrogation audio and video recordings, but failed to cover the period of extortion of confessions by torture alleged by the defense, and the physical examination records showed that Zhang Guoxi had wrist injuries when entering the detention center. The prosecution could not reasonably explain the source of the injuries, and the court finally excluded the relevant confessions on the ground that "the possibility of illegal evidence collection cannot be excluded".

4. Judicial Practice and Improvement Paths of the Standard of Proof for Excluding Illegal Evidence

4.1. Application of the Standard of Proof in Typical Cases

In the "Zhang Guoxi Bribery Case", the defendant argued that his confession was obtained by the investigation organ through extortion of confessions by torture, with scars on his wrist, and provided the testimony of fellow detainees. Although the prosecution provided part of the interrogation audio and video recordings, it failed to cover the period of extortion of confessions by torture alleged by the defendant, and the physical examination records of the detention center showed that the defendant had wrist injuries when entering the detention center. The prosecution did not make a reasonable explanation for the source of the injuries. After review, the court held that the evidence provided by the prosecution was insufficient to exclude the possibility of extortion of confessions by torture, and excluded the relevant confessions according to the standard of "inability to exclude illegality". This case typically reflects the key role of "the integrity of audio and video recordings" and "the explanation of the source of injuries" in the proof of the legality of verbal evidence, and also exposes the evidence loopholes of the prosecution in proving the legality of the procedure.

4.2. The Initiation Standard and the Transfer of the Burden of Proof in the "Guo Zongkui Drug Trafficking Case"

In the "Guo Zongkui Drug Trafficking Case", the defense applied to exclude the confession on the ground that the defendant was threatened and induced in the investigation stage, and provided the defendant's body surface examination record (showing multiple bruises) when entering the detention center and the testimony of fellow detainees. After review, the court held that the clues provided by the defense were specific and relevant, reaching the "reasonable doubt" initiation standard, and initiated the exclusion procedure. Thereafter, the prosecution bore the responsibility to prove the legality of the confession, and proved that the interrogation process was legal and the defendant's confession was made voluntarily by playing the full-process interrogation audio and video recordings, submitting the detention center's health examination records, and notifying the investigating personnel to appear in court to testify. The court finally determined that the prosecution had completed the burden of proof, and the confession was not excluded. This case clearly demonstrates the dynamic application process of the standard of proof in the initiation of the procedure and the transfer of the burden of proof, reflecting the procedural logic of "the defense's preliminary burden of proof - the prosecution's comprehensive proof".
Section 2 Problems Existing in Current Judicial Practice
1. Different Grasping Scales of the Initiation Standard
In judicial practice, there are significant differences in the grasp of the defense's initiation standard by different regions and different judges: some courts strictly interpret "relevant clues or materials", requiring the defense to provide almost conclusive evidence, such as injury appraisal opinions, written records of the investigating personnel's illegal evidence collection, etc., resulting in many reasonable exclusion ap-

plications being rejected; other courts are overly lenient, and initiate the procedure for applications that are obviously lacking in specificity, wasting judicial resources. The root cause of this phenomenon of different scales is that the legislation does not refine the connotation of "reasonable doubt", and there is a lack of specific operable standards.

2. The Vague Application of the Prosecution's Standard of Proof

When the prosecution proves the legality of evidence, the problem of vague application of the standard of proof often occurs: the proof of verbal evidence is mere formality: in some cases, the prosecution only submits the interrogation record and the "situation statement" of the investigation organ, does not provide key audio and video recordings, or the audio and video recordings have flaws such as editing and interruption, but claims to have reached the standard of proof.

The proof of the legality of physical evidence is insufficient: for the flaws in the search and seizure procedure, the prosecution fails to provide a reasonable explanation or supplementary materials, and only prevaricates on the ground of "work negligence", but the court approves it; the differentiated application of the duality standard is insufficient: some judges confuse the boundaries between "confirming illegality" and "inability to exclude illegality", and mistakenly judge the situation where the prosecution fails to fully prove the legality as "no illegal evidence collection", resulting in the evidence that should have been excluded being adopted.

5. Conclusion

The problem of the standard of proof in the procedure for excluding illegal evidence is related to the balance between procedural justice and substantive justice in criminal proceedings, the right allocation between the prosecution and the defense, and the standardized operation of judicial power. The current "reasonable doubt" initiation standard and "duality" standard of proof established in China not only absorb comparative law experience but also base themselves on local judicial practice, providing a basic framework for the operation of the procedure for excluding illegal evidence. However, the problems exposed in judicial practice, such as different grasping scales of the initiation standard, vague application of the prosecution's standard of proof, and insufficient typology, highlight the necessity of the refined construction of the standard of proof system. In the future, it is necessary to improve the standard of proof system through multiple paths such as clarification of operational guidelines, refinement of application rules, strengthening of typological research, and improvement of judicial cognition, so that the procedure for excluding illegal evidence can truly become a "protective net" to curb illegal evidence collection and ensure judicial justice. This process not only requires the improvement of legislation and judicial interpretations but also requires judicial personnel to accurately grasp the value core of the standard of proof in practice and integrate the concept of procedural justice into every link of evidence review, so as to finally achieve the unity of cracking down on crimes and protecting human rights.

References

[1] Chen Ruihua. Research on the Problem of Excluding Illegal Evidence in Crimi-nal Procedure [J]. Law Science, 2003, (06): 41-50.

[2] Zhang Zetao. On the Vacancy of the Exclusion Rule of Illegal Evidence in Criminal Procedure - A Perspective on the Procedural Risks of the Connection between Administrative Evidence and Criminal Evidence [J]. Tribune of Political Science and Law, 2019, 37(05): 67-80.

[3] Wang Jinyuan. Constitutional Thinking on the Exclusion Rule of Illegal Evi-dence - and Comments on the Amendment of China's Criminal Procedure Law [J]. Northern Law Science, 2012, 6(01): 38-43.

[4] Mou Jun. The Dilemma and Outlet of the Generation Mode of the Exclusion Rule of Illegal Evidence [J]. Ideological Front, 2023, 49(06): 160-168.

[5] Wang Jing. Application of the Exclusion Rule of Illegal Evidence under the Theory of Substantive Interpretation [J]. Legal Method, 2023, 45(04): 327-344.

[6] Bian Jianlin. Institutional Reflection on Excluding Illegal Evidence [J]. Contemporary Law Science, 2023, 37(03): 17-29.