

Misunderstandings and Clarifications in the Identification of Defective Evidence and Illegal Evidence

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Abstract

In the trial of cases, evidence has always been a crucial part of the trial process. Clarifying the application rules of evidence is not only conducive to fully protecting the legitimate rights and interests of the parties involved but also can effectively promote fair adjudication. However, from the current judicial situation, there are numerous misunderstandings in the identification of defective evidence and illegal evidence. The existence of these misunderstandings will not only affect the handling of evidence but also interfere with the trial of cases, so this issue must be taken seriously. Therefore, this article takes the misunderstandings in the identification of defective evidence and illegal evidence as the research object. On the basis of clarifying relevant concepts, it analyzes the misunderstandings existing in judicial practice and puts forward targeted solutions, hoping to further promote the handling of evidence-related issues.

Keywords

Illegal Evidence; Defective Evidence; Illegal Evidence Exclusion Rule

1. Introduction

Due to the imperfection of legal provisions, the existing legal provisions use overly principled expressions when defining the concepts of illegal evidence and defective evidence, lacking objective and feasible standards. Therefore, in the process of handling cases, confusion is very likely to occur. At the same time, with the continuous development of the times, more and more new situations have emerged. However, the law has lag, making it difficult to adapt to the needs of the evolving times. As a result, it is impossible to effectively distinguish between different types of evidence. Under such circumstances, it is necessary to clarify the misunderstandings between defective evidence and illegal evidence.

2. Overview of Defective Evidence and Illegal Evidence

2.1. Concept and Characteristics of Defective Evidence

Defective evidence mainly refers to evidence that has procedural or technical defects during evidence collection, such as minor illegalities in the collection, preservation, and other aspects. The evidential capacity of such evidence can only be used after correction. If correction cannot be made, the evidence has no evidential capacity and will be excluded in the subsequent application process.[1] Although defective evidence is illegal, it differs from illegal evidence in that as long as it can be corrected and explained to make it legal, it can be used as the basis for determining a case.

First of all, defective evidence has problems in procedures or technologies. For example, the statutory procedures were not followed during the collection or preservation of evidence; errors occurred in the entry of evidence data and information, and so on. Secondly, defective evidence is remediable. Although defective evidence is illegal, if it can be corrected and explained, its validity can be restored, and it can become legitimate evidence for use in cases. Finally, the legal consequences of defective evidence are closely related to the degree of defects. For defective evidence, if the degree of illegality is relatively minor, it can be corrected and explained for use. However, if the defect is serious, it may also be excluded from use.

In judicial practice, the accurate distinction and appropriate handling of defective evidence and illegal evidence are of crucial importance. The existence of illegal evidence seriously infringes on the legitimate rights and interests of the parties involved and violates the principles of the rule of law. For instance, in some cases, investigators obtain confessions by violently assaulting criminal suspects. Such acts not only harm the physical and mental health of the parties but also undermine the foundation of judicial justice.

Although defective evidence involves minor illegalities, it is remediable. Take an investigation record that lacks the signature of the investigator as an example. If the signature can be supplemented in a timely manner and the situation explained, the record can still be used as valid evidence. Clarifying the boundary between the two enables judicial personnel to accurately grasp the validity of evidence, ensures the fairness of case trial results, and upholds the authority of the law as well as the legitimate rights and interests of the parties involved.

2.2. Concept and Characteristics of Illegal Evidence

Illegal evidence mainly refers to evidence obtained in violation of mandatory legal provisions or involving infringement of the legitimate rights and interests of the parties. Such evidence often does not have probative force and should be prohibited from being used in application. For example, evidence collected by infringing on the parties' right to privacy or other personal rights, or in violation of the search requirements explicitly stipulated by law, etc. Illegal evidence can be identified as ev-

idence without evidential capacity, but it is not equivalent to illegal evidence in the broad sense. Generally speaking, illegal evidence in the broad sense includes illegal evidence (in the narrow sense) and defective evidence, and its connotation and extension are broader than those of illegal evidence (in the narrow sense).[2]

First of all, illegal evidence is illegal in the aspect of evidence collection, that is, it violates the explicit provisions of the law during evidence collection. Secondly, illegal evidence is not remediable. Different from defective evidence, the "illegality" of illegal evidence cannot be remedied. Its degree of illegality is relatively serious, and the exclusion principle is generally applied to directly exclude the application of such evidence, so as to ensure the principle of justice. Finally, the legal consequences of illegal evidence are clear and single. It will be directly excluded from application, mainly to protect the legitimate rights and interests of citizens, prevent the infringement of the parties' legitimate rights and interests for the sake of solving cases, and stop illegal evidence collection behaviors.

3. Misunderstandings in the Identification of Defective Evidence and Illegal Evidence

There are many misunderstandings in the practical application of defective evidence and illegal evidence. It is necessary to clarify them to determine the application of evidence. Specifically, the misunderstandings are mainly reflected in the following aspects.

3.1. Blurred Boundary between Defective Evidence and Illegal Evidence

Although the current law clearly defines defective evidence and illegal evidence and stipulates specific handling methods, in the actual application process, there are still cases of confusing the two types of evidence. Many judges and lawyers tend to identify defective evidence as illegal evidence in the process of handling cases. For example, during evidence collection, there are only some minor procedural or technical errors, such as wrong timestamps, blurred images, etc. There is no illegality in the collection of such evidence, but only some defects. However, some judges identify them as illegal evidence. Another example is the inconsistency of witness statements. In judicial practice, there may be different views. Some judges believe that this belongs to defective evidence and can be corrected, while others think that the reason for the inconsistency of witness statements is the existence of torture to extract confessions or improper pressure from public power, and it should be identified as illegal evidence and excluded. In addition, there are also many disputes in the practical field about whether some derivative evidence is illegal evidence or defective evidence. If defective evidence is improperly excluded without giving an opportunity for correction, it is very likely to affect the trial of the case, which is not in line with the principles of fairness and justice.

3.2. Improper Application of the Evidence Exclusion Rule

Due to the imperfection of legal provisions, judicial personnel may mechanically apply the illegal evidence exclusion rule when reviewing evidence, leading to the following situations.

In judicial practice, due to the unclear boundary between defective evidence and illegal evidence and the lack of professional knowledge of judicial personnel, some defective evidence with procedural or technical defects may be illegally excluded. For example, legitimate evidence lacking signatures, which can restore its validity through correction, is excluded as illegal evidence. In this case, it is very likely to lead to the loss of important evidence, making it impossible to form a complete evidence chain for the case, thus affecting the trial of the case.

In judicial practice, some judicial personnel also mistakenly identify illegal evidence as defective evidence, fail to exclude it, and instead require correction. For example, evidence obtained through torture to extract confessions, which should be excluded as illegal evidence, is given an opportunity for the investigation organ to explain, which may lead to unjust, false, and wrong cases.

3.3. Non-standard Correction Methods for Defective Evidence

Although defective evidence can be corrected at present, the correction methods in judicial practice are not standardized. Specifically, it is reflected in the following aspects. First of all, there is a lack of specific operation guidelines and effective supervision. Since the current legal provisions and judicial interpretations do not have clear regulations, in practice, the correction is basically carried out by the investigation organ issuing a situation explanation. In addition to judicial organs, many appraisal institutions also use this method for correction, which is not in line with the principle of direct and verbal testimony, resulting in many reviews being superficial and failing to fully protect the litigants' right to litigation. At the same time, this also reflects that the current correction measures lack effective supervision. Secondly, the correction measures are too subjective. At present, when implementing correction measures, judicial personnel are too subjective. For example, some judges believe that although the evidence is defective, its source is legal, so no correction is needed, and the evidence is directly adopted in the trial. This is actually a neglect of the correction rule and a manifestation of emphasizing substantive justice over procedural justice. [3]

4. Clarification of Defective Evidence and Illegal Evidence

Clarifying defective evidence and illegal evidence is of great significance. Specifically, we can proceed from the following aspects.

4.1. Clarifying the Boundary between Defective Evidence and Illegal Evidence

In the author's opinion, to clarify defective evidence and illegal evidence, the "form-substance hierarchical identification method" can be adopted. Specifically, the following points need to be done.

Formal Judgment. First, analyze the source of the evidence and clarify the collector of the evidence, the collection location, and the collection time. Secondly, analyze the evidence collection process, clarify whether there are situations such as contamination and alteration, and whether there are acts of violating human rights such as violence and threat. Finally, analyze the result of the evidence, clarify whether the evidence is consistent with the original, and whether it has been checked and confirmed. Through formal judgment, determine whether the evidence is legal evidence or illegal evidence. If it is illegal evidence, further judgment is needed.

Substantive Judgment. After confirming that the evidence is illegal evidence, first of all, it is necessary to analyze whether the evidence infringed on human rights during the collection process, that is, to make a judgment using the human rights rule. Secondly, it is also necessary to analyze whether the parties felt pain, that is, to make a judgment using the pain rule. Thirdly, it is necessary to analyze whether the authenticity of the evidence is affected, that is, to make a judgment using the authenticity rule. Finally, it is also necessary to analyze whether the voluntariness of the parties is affected, that is, to make a judgment using the voluntariness rule. If any of the above four rules is met, it indicates that the evidence is illegal evidence. If none of the four rules is met, it is defective evidence and can be corrected.

First of all, when applying the identification method, it is necessary to proceed from form to substance and follow a certain sequence. This is mainly required by the theory of prohibition of illegal evidence collection. When judging the nature of evidence, it is necessary to analyze whether the evidence collection process complies with the provisions of the law and whether it is necessary to exclude illegal evidence. If it is legal evidence, there is no need to enter the stage of substantive judgment. Secondly, the identification method adopts an alternative relationship. Both formal judgment and substantive judgment adopt an alternative relationship, and it is not necessary to meet all the conditions. As long as one of the conditions is met, for example, in formal judgment, as long as the source is illegal, it is illegal evidence; in substantive judgment, as long as the human rights rule is violated, it is illegal evidence. Finally, the preponderance of evidence standard is adopted. In the substantive judgment, when analyzing the four rules, the preponderance of evidence standard should be adopted because it involves procedural facts. For example, if the judicial organ adopts a threatening method that may damage the interests of the parties' relatives, as long as it may cause the parties to violate the voluntariness rule and make untrue confessions, it should be identified as illegal evidence. [4]

4.2. Clarifying the Application of the Evidence Exclusion Rule

When applying the illegal evidence exclusion rule, the following steps need to be followed to effectively distinguish between defective evidence and illegal evidence and prevent improper exclusion.

First of all, it is necessary to improve legal provisions and clearly stipulate the review and identification standards and exclusion conditions for illegal evidence and defec-

tive evidence, so as to provide theoretical guidance for judicial practice. In the process of reviewing cases, regardless of whether the case is urgent or complex, strict review is required. A comprehensive assessment of the nature of the evidence should be conducted to distinguish the degree of illegality of the evidence. Evidence with serious illegality should be classified as illegal evidence and excluded. When excluding evidence, it is first necessary to put forward an exclusion request, then conduct an evidence hearing, and finally the court makes a ruling. After the illegal evidence is excluded, the parties' remedies should be clarified to promote the trial of the case. For some defective evidence, in order to prevent the loss of important evidence, the correction procedure should be implemented first. As long as it becomes legal after correction, it can be applied. For evidence that cannot be corrected, a reasonable explanation is required.

When excluding illegal evidence, it is necessary to ensure the parties' right to defense and their right to participate. At the same time, in the process of evidence exclusion, the fairness and transparency of exclusion should be ensured, and a judicial supervision and case evaluation mechanism should be established to ensure the legal application of the evidence exclusion rule. Through continuous education and training, the professional knowledge and professional ability of judicial personnel should be improved, and a professional team should be cultivated to enable them to effectively distinguish the nature of evidence and prevent improper exclusion.

4.3. Clarifying the Standardization of Correction Methods for Defective Evidence

For defective evidence, it is necessary to fully improve the standardization of correction methods. Specifically, the following points need to be done.

The correction methods should be clarified to ensure the effective implementation of correction measures. Due to the unclear current legal provisions, there are various correction methods in the theoretical and practical fields, and the judicial application is very confusing. Therefore, specific methods must be clarified and certain operation standards should be provided. For example, it can be stipulated that the correction method of providing simultaneous audio and video recordings or verifying the situation with witnesses can be adopted. With the continuous development of science and technology, it is also necessary to make full use of emerging technologies. For example, in the case of proxy signature, if the parties are in remote areas or illiterate, it is relatively difficult to make corrections. However, if methods such as remote testimony are adopted, it can greatly reduce human and economic costs and effectively solve the problem of evidence validity. At the same time, in the process of correction, it is also necessary to strengthen supervision over correction. On the one hand, a supervision mechanism should be established, and a special supervision agency should be set up to effectively supervise and review the correction; on the other hand, technical means can be adopted to strengthen communication and coordination. Through information technology, an electronic evidence management system can be built to

record the correction behaviors, so as to ensure traceability, strengthen communication and coordination among various departments, and achieve information sharing, thus effectively promoting the trial of cases.

It is necessary to formulate clear supplementary rules and issue objective standards, including methods, time, and requirements, to prevent the abuse of discretionary power. Secondly, strengthen the training of judicial personnel. Through professional training, improve the overall quality of judicial personnel, strengthen their professional capabilities, and prevent excessive subjectivity. Finally, clarify the responsibility investigation mechanism. If there are illegal acts in the correction measures, a mechanism of holding individuals accountable should be implemented to reduce the occurrence of illegal acts. In addition, an objection and review mechanism can also be established. If the parties have objections to the correction results, they can request a review to ensure the validity of the correction results.

5. Conclusion

At present, in judicial practice, there are misunderstandings in the application of the illegal evidence exclusion rule and the defective evidence correction rule. Due to the unclear boundary between illegal evidence and defective evidence, many judicial personnel confuse the two. They improperly regard illegal evidence as defective evidence for correction, thus violating the rigid standards of the illegal evidence exclusion rule. On the other hand, regarding defective evidence as illegal evidence for exclusion may lead to the loss of important evidence and affect the trial of cases. Therefore, aiming at the current misunderstandings that need to be clarified in the identification of defective evidence and illegal evidence, this article takes this as the research object. On the basis of analyzing relevant concepts, it clarifies that the current misunderstandings are mainly reflected in the blurred boundary between defective evidence and illegal evidence, the improper application of the evidence exclusion rule, and the non-standard correction methods of defective evidence. Targeted solutions are put forward for the above misunderstandings, hoping to further resolve the disputes existing in judicial practice and promote the legality and authenticity of evidence.

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