Improvement of the Rule of Excluding Illegal Evidence

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Abstract. As the strengthening of the construction of legal system in our country, for the study of the rule of illegal evidence elimination is in unceasing deepening, but the application there is a shortage of illegal evidence elimination rule. This article analyzes the present situation of the illegal evidence exclusion rule in China, more foreign related content of the illegal evidence elimination rule, according to the actual situation of our country, puts forward some Suggestions on perfecting the illegal evidence elimination rule.

The Significance of the Rule of Illegal Evidence Elimination

Maintaining the Social Overall Benefit

As for the case, only starting from the objectivity and relevance of evidence, cannot be completely ruled out the possibility of illegal evidence has proved that the truth. Therefore, the application of the illegal evidence elimination rule could be the fact that makes the judge in evidence, based on which could lead to the judge to find out the real situation of case, damage to the part of the legitimate interests of the parties. But, despite the examples, if only to pursue the authenticity of the case, and give up for the legitimacy of evidence investigation, will make in the process of the judicial personnel in handling cases, eager to pursue the case of a "real" and ignore due process. The establishment of illegal evidence exclusion rule, the legitimacy of the program and the legitimacy of the entity to the same heights case, more conducive to protect the legitimate rights and interests of society as a whole.

Curb Illegal Evidence Collection

In recent years, some of the judicial personnel take illegal evidence, the judge did not exclude the illegal evidence in the trial, but that which leads to wrong case. In the field of criminal proceedings, illegal evidence exclusion rule for illegal evidence of judicial personnel has certain warning and control function. In the field of civil lawsuit, also can inhibit the illegal evidence elimination rule of illegal evidence collection behavior, but is mainly for the litigants and their agents. In the field of the administrative litigation, illegal evidence exclusion rules for the administrative subject in the aspect of illegal evidence submitted can also play the role of inhibition. Reflected in the field of litigation "anyone shall not profit from illegal" the ancient principle of offenders to behavior at the cost of losing his own mistakes, to litigation has made clear that the parties involved, forcing them to do all it can to use legal methods to collect evidence.

Safeguard the Lawful Rights and Interests of the Parties

A case can find out the facts, the key lies in whether really sufficient evidence. The judiciary some cases under the pressure, often will use some illegal means to obtain evidence, to achieve the purpose of ascertaining facts. But this is bound to seriously infringe upon the legitimate rights and interests of the parties, at the same time in this way can obtain evidence as a basis for the finalized is questionable. Establishment of illegal evidence exclusion rule, to safeguard the lawful rights and interests of the parties from illegal infringement. To prevent the illegal evidence collection behavior of the judiciary, especially can prevent in some criminal cases, the individual the judiciary through
the corporal punishment or corporal punishment in disguised forms to obtain evidence, such as not
allowed to rest on the serious its legitimate rights and interests of criminal suspects.

Rules of Excluding Illegal Evidence in Our Country the Status Quo

For the Definition of Illegal Evidence is not Clear

Is does not conform to the legal source and form of illegal evidence or breaking the procedure to
obtain evidence. And some scholars believe that "illegal evidence" of the illegal evidence
elimination rule, only refers to in the process of collecting the evidence in violation of the laws,
violated the legal rights of criminal suspects or defendants in evidence. In the new revised criminal
procedure law amendment, the evidence is defined as can be used to prove the fact of the case
material, are all evidence, can only be seen in the definition in the amendment, only for the
objectivity of evidence and relevant requirements, rather than the legitimacy to make corresponding
provisions. Therefore, for the definition of illegal evidence in the amendment, there is need to
perfect space. Definition of the concept will make during the case, a judge, prosecutors, lawyers and
the parties is whether the evidence of illegal evidence, whether should be ruled out. So, in the
judicial practice, corporal punishment in disguised forms of evidence is more difficult to define,
the judges in the actual operation it is difficult to determine the legality of the evidence if there is a
problem, should be ruled out. To a certain extent, can produce wrong case, the phenomenon of the
damage of justice, makes some kind of judicial personnel or the use of legal loopholes, escape from
the law.

Of the Illegal Evidence Exclusion Rule is not Sound

First, in the amendment, illegal evidence exclusion rule has two aspects: the content of the
exclusion of illegal evidence means and illegal evidence rule out of the program, But it only
provides the material evidence, documentary evidence, and for other kinds of evidence, the
evidence of illegal phenomenon exists in the process of program, and make to rule out the
provisions of the no. Second, in the amendment and the scope of the illegal evidence is not
comprehensive. Testimony of the witness and the victim statement, material evidence, documentary
evidence, and not to other types of evidence in the category of illegal evidence, the obvious
shortcomings. Third, about whether the evidence of the illegal evidence derived using there are
controversial. Some people think that should be ruled out, so that to ensure the basic rights of
citizens; While others hold the opposite view, but derived evidence is not necessarily, in the specific
case may choose to apply conditional. Derived evidence whether to don't rule out, there is a
regulation in the existing legal provisions, at the same time, also has not made clear rules in the
amendment.

The Relevant Mechanism is Missing

Due to the lack of relevant supporting mechanism, there is no established perfect effective
punishment mechanism of prevention mechanism, illegal, illegal evidence review mechanism as
well as the illegal evidence of illegal evidence the victim's relief mechanism, therefore, in judicial
practice, the application of rules of excluding illegal evidence in our country cannot achieve good
results. First, loss prevention system, most of the defendants clues or evidence often have great
difficulty, in the case of investigation stage, the interrogation of criminal suspects, in many parts of
the public security organs have not synchronized video recording measures, namely the whole
course of interrogation of curing is not down, even if the defendants have a case of torture, there is
no direct evidence to prove that. And, according to China's existing laws and regulations, in the
investigation stage, in the process of interrogation of criminal suspects are not allowed to defense
lawyers present, so there would be no witnesses to prove directly, make the rights and interests of
the criminal suspect was missing a layer of protection, are more likely to be infringed. No such
direct evidence, proof for the defendant is there is a big difficulty, defendants have illegal evidence
in the trial, but there is no evidence to support, usually is considered a likely confession, prosecutors
would advise the judge will be heavier during the sentencing, such an approach for the defendant was a harm, will greatly damage the authority of the law. So it is necessary to establish a system of lawyer present throughout. Second, the problems existing in the audit mechanism, the criminal case concerning the provisions on some issues of excluding illegal evidence, the prosecution, the prosecution shall provide to the court interrogation, interrogation process of original recording or other evidence, draw or testify in court interrogation notice people on the scene, still can't rule out torture suspected, informing of interrogation personnel to the court to testify, the legitimacy to prove his statement "Thus it can be seen that when necessary can also draw the investigators to appear in court to testify the way to prove the legitimacy of the evidence. Therefore, there are still some disadvantages pursuant. First, the trial was conducted in a relatively closed space, not the third person, any witnesses of the talk. Second, please investigators to appear in court to prove the legitimacy of evidence, can scout identity is at this time of the parties, whether violated the rules of the challenge system, for such proof, the size of the probative value how many, how believable and how many, confession of persuasion and how much. According to the stipulations of article 48 of the amendment, illegal evidence of the burden of proof shall be borne by the prosecution in principle, but also in certain cases the defendant to bear the burden of proof of illegal evidence, the circumstances under which the defendant bear the burden of proof, has not explicitly stipulated in the amendment. For this a series of problems, not only from the perspective of legitimacy and rationality to explore, but also from the operability in practice aspect to consider. Third, lack of punishment mechanism, Relatively general, but the provisions have rules of illegal evidence is relatively single, the legal consequence of the illegal evidence for investigators, the cost of lower cost, relative to solve in the face of investigation and obtaining illegal evidence, will choose to solve crimes. Fourth, lack of right relief system, the parties concerned due to illegal evidence collection rights and interests are harmed, should how to get relief, mostly comes from "the state compensation law", the same rules more general. The parties how to obtain relief, and relief program process needs to be further clear.

The Improvement of the Rules of Excluding Illegal Evidence in Our Country

Clearly Defined Illegal Evidence

For the definition of the illegal evidence should be based on the definition of evidence, we define the form of illegal evidence should be from the evidence and the legitimacy of the applicable process request, forms of evidence must be type well-established evidence in the lawsuit, evidence collection, fixed or use process the security, submit also should conform to the relevant laws and regulations. Up on the basis of defining the illegal evidence, that is, content and form of expression of the illegal evidence refers to the evidence does not conform to the provisions of the law, or illegal collection of evidence are collectively referred to as illegal evidence law. Clearly defined, illegal evidence in the case, a judge can be accurately identified illegal evidence, and shall be excluded. Investigators in the process of evidence collection, know which behavior desirable, what behavior is not desirable, to guide the behavior of the investigators.

Perfect the Legislation of the Illegal Evidence Elimination Rule

Perfecting the Kinds of Evidence Rules

First, in the procedure law provides for seven types of evidence, but only in the amendment to the illegal collection of documentary evidence and evidence will not be believed, no, ruling on whether illegally collected other evidence illegal but other evidence in the case of also prove the authenticity of the case, should be illegal to collect the remaining five evidence situation is listed, use legal loopholes to avoid forensics subject to escape from the law. Second, stipulated in the amendment of the scope of the illegal evidence involves: the criminal suspect or defendant stated, testimony of the
witness and the victim statement, material evidence, documentary evidence, but other types of evidence does not refer to. Why don't other types of evidence does not produce illegal evidence? This is clearly not. So we should perfect legislation, expand the existing category of the illegal evidence, the evidence types and kinds of illegal evidence to form the corresponding relationship. This is advantageous to the investigation, prosecutors can determine the types of illegal evidence, can it out early, but also to the judge in the trial of cases, targeted exclusion of illegal evidence. This will help to improve the efficiency of justice, efficient to identify the legality of the evidence.

The Physical Evidence and Oral Evidence Differently

Combined with China's national conditions, for the illegal evidence rule out a policy of detente, easier to let the parties accept, can draw lessons from the practice of Japan, the evidence is divided into physical evidence and oral evidence differently. For the verification of physical evidence, due to the physical evidence has strong stability, not easy because of the change of external condition, can have conditions to be determined. In respect of oral evidence, must carry on the strict rule out, as long as it is against the will of the parties and obtain evidence, should be ruled out unconditionally.

Improve the Relevant Supporting Mechanism

A establishing the system of interrogation of the entire video Interrogation of criminal suspects was filmed, and will be taken in time data preservation and fixed. This approach can not only contain the investigators to torture of suspects, but also help the criminal suspect evidence of illegal evidence in the court process is put forward. But along with the continuous development of science and technology, video shear editing techniques to improve, the entire video can be artificial clip joining together, so as to lose its authenticity. So, the author thinks that the interrogation room cameras should be carried out by the organs at higher levels of network center network monitoring, this can effectively prevent the use of shear editing techniques, can also do related to the audio-visual material backup, when the investigation organ to provide when there is a suspicion of audio-visual material, can enable the backup data, and compared with the backup data, making the effective exclude illegal evidence, safeguard interrogation process open and transparent.

Empower a Lawyer Present Throughout

In our country, the lawyer does not have the presence of a complete, only when the case is transferred for examination before prosecution, defence lawyers may apply to the present, but before that, for the public security organs of interrogation lacks the effective supervision of a lawyer. The author thinks that, when lawyers to interrogation in the process, can effectively prevent the behavior of the torture, and is no longer a afterwards relief act, to protect the rights of the parties are not violated. To this, we can draw lessons from the United States, the lawyer will present all the empowerment. Can even from Japan's practice, expand the scope of the present personnel, as long as don't give investigation activities under the premise of a negative impact, everyone can be a witness to the interrogation scene, in order to improve the transparency of interrogation. So establish lawyer present rights is very necessary, it is of extremely important significance for reducing the authenticity of the case, avoid being happening again, is an important part of the rule of law construction in China.

Increase Penalties for Illegal Forensic

Illegal evidence cognizance in the process of bodily injury and property damage caused by the parties, the parties shall have the right to demand of state compensation. Can recover from the illegal investigators to judiciary, the relevant investigators assume the liability to pay compensation. In addition, if the circumstances are serious illegal evidence also need to bear the relevant civil, criminal and other dual responsibility. So when investigators in violation of the law, will naturally given the cost of illegal, these measures can be further from the source to prevent the occurrence of the phenomenon of illegal evidence collection.
Establish Right Damage Relief System

First, to determine the range of compensation, under what circumstances can get compensation, get what compensation, how much compensation should be in the form of law to make clear rules. Second, clear the parties to recover damages or compensation, if the investigation organ in order to solve crimes, adopt the means of illegal evidence, the case of injustice, brought by the parties, the parties may, by way of application to the relevant authorities to apply for and obtain damages or compensation. Third, for the relief of the parties, where money is coming from, also want to make clear rules. Should establish a special fund, the fund sources include not only national financial support, the main is fine for judicial personnel, followed by donations from all walks of life. Fourth, clear the parties to seek relief way, such as can get relief by administrative litigation.

Conclusion

Establishment of the rule of illegal evidence exclusion, is an indispensable part of the rule of law construction in our country. To perfect our legislation, and actively to strengthen the prevention and punishment mechanism and the construction of the remedy mechanism, to ensure the effective implementation of the rule of illegal evidence elimination and safeguard the legitimate rights and interests of the parties.

References

