

The Application Dilemma and Countermeasures of the Exclusionary Rule of Illegal Electronic Evidence

Yuxia Wang

School of Marine Law and Humanities, Dalian Ocean University, Dalian, 116023, China

Abstract

The exclusionary rule of illegal evidence is an important rule in criminal proceedings. Whether the exclusionary rule can be accurately mastered and applied directly affects not only the legitimate rights and interests of the parties, but also the final judicial justice. As an emerging type of evidence in the era of big data, electronic evidence is also one of the legally prescribed types of evidence and undoubtedly should be included in the scope of adjustment of the exclusionary rule for illegal evidence. However, on the whole, there are some problems in the current illegal electronic exclusion in our country, such as the imperfect legal provisions on the exclusion of illegal electronic evidence, the incomplete standards for the determination of illegal electronic evidence, and the insufficiency in the legality review of the electronic evidence collection procedures. Based on this, it is necessary to supplement and improve the relevant provisions in the Criminal Procedure Law, clarify the exclusion rules of illegal electronic evidence at the legal level, and refine the exclusion standards of illegal electronic evidence, so as to open up a way out for the application of the exclusion rules of illegal electronic evidence.

Keywords

Exclusion of illegal evidence, electronic evidence, exclusionary rule, exclusionary standard.

1. Introduction

This paper focuses on the key issue of the exclusion rule of illegal electronic evidence. With the acceleration of the digitalization process, the importance of electronic evidence in criminal proceedings is increasingly prominent, but its legal acquisition and use face many challenges. At present, the exclusion of illegal electronic evidence in our country is confronted with many difficulties, including incomplete legal provisions, imperfect determination standards, and insufficient legality review. The existence of these problems not only threatens the basic rights of citizens, but also poses a severe challenge to judicial justice. Therefore, it is particularly important to deeply explore the application predicament of the exclusion rule of illegal electronic evidence and propose effective solutions. This article will start with an overview of the exclusion rules of illegal electronic evidence, analyze its practical predicaments in judicial practice, and then propose improvement paths, aiming to contribute to promoting the improvement of China's Criminal Procedure Law and enhancing the fairness and effectiveness of judicial practice.

2. Overview of the Exclusion Rule of Illegal Electronic Evidence

2.1. Overview of the Exclusion Rule of Illegal Evidence

The exclusion rule of illegal evidence means that evidence collected by law enforcement officers of state organs and other personnel authorized by them through illegal means shall not be adopted at any stage of criminal proceedings [1]. The Criminal Procedure Law of the People's Republic of China, revised in 2012 (hereinafter referred to as the "Criminal Procedure Law"),

through the provisions of Articles 54 to 58, detailed the requirements of the exclusionary rule of illegal evidence and established the legal status of the exclusionary rule of illegal evidence. For instance, Article 54, Paragraph 1 of the Criminal Procedure Law revised in 2012 clearly stipulates that "confessions of criminal suspects and defendants collected through illegal means such as torture to extract confessions, as well as testimony of witnesses and statements of victims collected through illegal means such as violence and threats, shall be excluded." Where the collection of physical or documentary evidence does not comply with the legal procedures and may seriously affect judicial justice, it shall be corrected or a reasonable explanation made. If the evidence cannot be corrected or reasonably explained, it shall be excluded. The exclusion rule of illegal evidence, as an indispensable part of the judicial system in modern countries under the rule of law, not only reflects the respect for legal procedural justice and the protection of human rights, but also is of great significance for enhancing the credibility of the national judiciary.

2.2. Overview of Illegal Electronic Evidence

Electronic evidence refers to all materials and their derivatives that are stored, processed or transmitted in electronic form during the investigation, review and prosecution, and trial of criminal cases and can be used as evidence [2]. With the wide popularity of the Internet and electronic terminals, the application of electronic evidence in judicial practice in the field of criminal litigation has become increasingly frequent, playing a crucial role in the process of seizing criminal stolen goods and solving cases. Electronic evidence, including emails, text messages, chat records, web logs, electronic transaction records, etc., is playing an increasingly important role in criminal proceedings due to its characteristics such as easy access, large storage capacity and easy analysis [3]. The Criminal Procedure Law of the People's Republic of China, revised in 2012, explicitly stipulated "electronic evidence" as one of the types of legal evidence for the first time, marking that electronic evidence has gained a legal status in criminal proceedings. The "Rules for Electronic Data Forensics in Handling Criminal Cases by Public Security Organs" in 2019 has made provisions on the collection, extraction and review and judgment of electronic data from a technical perspective, but has not clearly stipulated the consequences of violating the procedures. Moreover, as a departmental regulation, it can only standardize the behavior of investigation and evidence collection, and cannot play a regulatory role in the procedures of review and prosecution and trial. It cannot yet be used as the applicable basis for the exclusion of illegal electronic data.

Since the review and judgment of electronic evidence involve scientific and technological knowledge such as network information technology and computer technology, for judges, both the prosecution and the defense, as well as lawyers, the review and judgment of electronic evidence all face obstacles composed of professional knowledge [4]. Compared with traditional types of evidence, the uniqueness of electronic evidence is mainly reflected in the following aspects: First, the types of electronic evidence are diverse. For instance, the voice messages sent by the parties during wechat chats fall under audio-visual materials in the category of evidence, but the corresponding web logs, emails, etc. fall within the scope of physical evidence. Secondly, electronic evidence is characterized by accuracy and immediacy. Electronic data often has time and user identification, which enables the authenticity and source of evidence to be precisely tracked and verified. It can be quickly obtained through the network, reducing the time cost of on-site investigation and evidence collection, and improving judicial efficiency. Thirdly, compared with traditional types of evidence, electronic evidence shows a higher degree of technological dependence. On the one hand, the acquisition and analysis of electronic technology often rely on specific professional knowledge and specific tools; On the other hand, since electronic technology is vulnerable to tampering and damage, specific technical measures are needed to ensure and verify its authenticity and integrity.

2.3. The Necessity Of Excluding Illegal Electronic Evidence

2.3.1. Legal basis

Electronic evidence, as an independent type of evidence, should be included in the scope covered by the exclusionary rule of illegal evidence. Whether it is the requirements for the legality rules of electronic evidence in the "Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China" in 2012, or the detailed regulations on electronic evidence in each link of criminal cases in the "Rules for Electronic Data Forensics in Handling Criminal Cases by Public Security Organs" published in 2018, All these reflect the state's emphasis on electronic evidence and, to a certain extent, support the rationality of including electronic evidence within the scope of application of the exclusionary rule of illegal evidence.

Furthermore, from the perspective of purpose interpretation, the reason for formulating the rule of excluding illegal evidence is that the legislative purpose is to start from the source, resolutely ban the illegal collection of evidence, protect the legitimate rights of the parties involved, and maintain the credibility of the judiciary. Therefore, including illegal electronic evidence within the scope of exclusion of illegal evidence undoubtedly conforms to this legislative purpose. Meanwhile, illegally obtained electronic evidence often infringes upon individuals' basic rights such as privacy rights and freedom of communication. When extracting private data, due to the high secrecy and technicality of forensic methods, they are often more likely to infringe upon citizens' basic rights, and the degree of privacy infringement on citizens is more serious than that of traditional forensic methods. Excluding the application of illegally collected electronic evidence is not only an inevitable requirement for criminal proceedings under the background of the rule of law, but also a practical need to implement the principle of the rule of law and respect and safeguard the basic constitutional principles such as human rights in law enforcement practice.

2.3.2. Practical Necessity

Excluding illegal electronic evidence from application is in line with the requirements of The Times. In the digital information age, the generation and application of electronic evidence have become the norm in judicial practice. However, with the advancement of technology and the popularization of applications, the illegal acquisition and tampering of electronic evidence have become increasingly rampant, posing severe challenges to judicial justice and legal authority. If illegally obtained or tampered electronic evidence is allowed to enter the court, it will seriously undermine the fairness of the judiciary and the authority of the law, easily lead to the occurrence of wrongful convictions, and affect the credibility of the judiciary and social stability. Therefore, electronic evidence needs to be included in the scope of application of the exclusionary rule of illegal evidence to regulate the behavior of investigators in collecting and extracting electronic evidence and avoid the infringement of citizens' legitimate rights by evidence collection as much as possible.

3. The Existing Predicament of Excluding Illegal Electronic Evidence

3.1. Lack of Specific Legal Provisions of the Exclusion of Illegal Evidence

Firstly, electronic evidence, as a type of evidence, has not yet been explicitly included in the scope of the adjustment of the exclusionary rule for illegal evidence. In 2017, the Supreme People's Court and the Supreme People's Procuratorate, in conjunction with the Ministry of State Security, the Ministry of Justice, the Ministry of Public Security and other departments, jointly issued the "Several Provisions on Strictly Excluding Illegal Evidence in Handling Criminal Cases", which stipulated a series of review standards and evidence collection

requirements for both verbal evidence and physical evidence, but did not make corresponding provisions for electronic evidence as a type of evidence.

Secondly, at present, China has not issued a specific law to define the concept of electronic evidence, and there is no clear standard for what exactly constitutes electronic evidence in law enforcement cases. With the increasing complexity of big data acquisition and tampering technologies, the identification and determination of electronic evidence will only become more difficult. Therefore, it is even more necessary for the law to give corresponding feedback in a timely manner and define the concept and categories of electronic evidence.

3.2. Lack of Specific Rules for the Determination and Exclusion of Illegal Evidence

The prerequisite for the exclusion of illegal electronic evidence is to define the illegal electronic evidence. How to accurately define the illegal electronic evidence becomes particularly important. From the perspective of evidence collection procedures, the current Chinese law does not explicitly state how the investigation authorities should follow the approval procedures when implementing technical investigation measures, but what standards the relevant responsible persons should rely on for approval. Furthermore, regarding the methods of obtaining evidence, although relevant departmental regulations have stated that the methods of obtaining evidence should comply with relevant technical standards, the current law does not provide a clear definition of what exactly constitutes "relevant technical standards".

3.3. Inadequate Review of the Legality of Illegal Electronic Evidence

The exclusion rule of illegal evidence should first ensure the legal actors of the evidence, rather than the issue of authenticity. Evidence access is the first step of evidence review, addressing the issue of evidence legality. Evidence evaluation is only involved after the evidence is admitted, addressing the issue of evidence proving the facts of the case [5]. The legality review of electronic evidence is an important step to exclude illegal evidence. However, in actual operation, the legality review of electronic evidence is often insufficient and strict. Due to the complexity of technology and the insufficient understanding of electronic evidence by legal personnel, it is very easy to cause neglect or omission in the legality review of electronic evidence. Confuse the authenticity review of electronic evidence with the legality review.

4. Improvement Path of the Exclusion Rules for Illegal Electronic Evidence

4.1. Improve the Legislation Related to the Exclusion of Illegal Electronic Evidence

The legal evidence collection of electronic data is not only related to the efficiency of case handling, but also concerns the basic rights of the person being prosecuted. As mentioned earlier, there is currently a lack of explicit legal provisions on whether illegal electronic evidence can be directly subject to the exclusion rule of illegal evidence. Therefore, it is urgent to revise or improve relevant laws and regulations, refine the specific provisions for the exclusion of illegal electronic evidence, expand the scope of illegal evidence, and incorporate the exclusion rules of illegal electronic data into the criminal litigation system [6]. Clarify the definition, scope and specific conditions for exclusion of illegal electronic evidence at the legislative level. At the same time, the composition of the acts of illegally obtaining, tampering with and manipulating electronic evidence is refined, the relevant standards and procedures for evidence exclusion are clarified, and the legal consequences after the exclusion of evidence are stipulated.

4.2. Improve the Detailed Standards for Excluding Illegal Electronic Evidence

To improve the source rules of the exclusion rules for illegal electronic data and supplement and perfect the corresponding rights protection norms, the key lies in clarifying the problem of the confusion in the nature of the current electronic data investigation measures, and constructing the electronic data forensics norms based on rights protection [7]. The circumstances of excluding illegal electronic evidence in China's practice constitute the mechanism of excluding illegal electronic evidence at the factual level, laying a solid foundation for extracting the rules of excluding illegal electronic evidence in the textual sense [8]. Based on this, illegal electronic evidence can be classified and processed, and the criteria for identifying and excluding different types of illegal electronic evidence can be refined. Firstly, illegal electronic evidence can be classified into different types such as procedural violation electronic evidence, procedural defect electronic evidence, and technical error electronic evidence, and different exclusion rules can be formulated specifically [9]. Secondly, establish identification standards for electronic evidence, clearly defining how to determine the authenticity, integrity and credibility of electronic evidence, as well as how to identify and exclude evidence that has been illegally tampered with or manipulated. Finally, it is necessary to establish standardized procedures for evidence preservation and extraction to ensure that standardized operations are followed during the processes of evidence collection, extraction, storage and transmission, and to prevent evidence from being illegally tampered with or manipulated [10].

4.3. Strengthen the Legality Review of Illegal Electronic Evidence

Establish and improve the legality review mechanism for electronic evidence to ensure that all electronic evidence undergoes strict legality review before being tried in court. In addition, guiding cases can also be released to provide judges with specific operational guidelines for excluding illegal electronic evidence, thereby enhancing the consistency and predictability of judgments [11]. By providing more explicit adjudication rules, the erroneous determination of illegal electronic evidence caused by the subjective will of judges' personal will can be prevented, which affects the fairness of the judgment [12]. At the same time, advanced technological means such as blockchain and digital signatures can also be utilized to ensure that the source of electronic evidence is traceable and its content cannot be tampered with, thereby enhancing the efficiency and accuracy of the review process and creating a current channel for excluding illegal electronic evidence.

5. Conclusion

This paper deeply explores the application predicaments and countermeasures of the exclusion rule of illegal electronic evidence. By analyzing the current laws, regulations and judicial practice in our country, it is found that there are many problems in the application of this rule, such as incomplete legal provisions, missing determination standards and inadequate legality review. In response to these problems, this paper proposes paths such as improving legislation, perfecting standards and strengthening review. Improving legislation is the foundation. It is suggested that the definition, scope and exclusion conditions of illegal electronic evidence be clearly defined in the Criminal Procedure Law, and the legal consequences after excluding evidence be stipulated at the same time. It is crucial to improve the detailed standards for excluding illegal electronic evidence. It is necessary to categorize illegal electronic evidence, formulate the exclusion rules and appraisal standards for different types of evidence, and standardize the procedures for evidence preservation and extraction. Strengthening the legality review of illegal electronic evidence is the guarantee. A complete review mechanism should be established and advanced technical means should be utilized to enhance the efficiency and accuracy of the review. The implementation of these measures can effectively

solve the problems in the application of the exclusion rule of illegal electronic evidence, improve the criminal litigation evidence system in our country, ensure judicial justice, and promote the process of building a law-based society. The research of this article aims to provide useful references for relevant legislation and judicial practice, and promote the exclusion rule of illegal electronic evidence to better play its due role in criminal proceedings.

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