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## **Scientific Journal of Bielsko-Biala School of Finance and Law**

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# Contents

|   |    |
|---|----|
| <b>Medani P. Bhandari</b><br><i>The Corruption a Chronic Disease of Humanity: Causes, Effects and Consequences</i> .....  | 5  |
| <b>Stanisław Ciupka</b><br><i>Ethical dilemmas of contemporary business</i> .....   | 18 |
| <b>Michał Comporek</b><br><i>Levels of reported financial result and the scope of accrual-based earnings management. An exemplification studies on the example of public companies of the clothing industry</i> ..... | 22 |
| <b>Justyna Fibinger-Jasińska</b><br><i>Judicial review of illegal clauses in consumer loan agreements</i> .....   | 28 |
| <b>Wojciech Jakubiec</b><br><i>The essence of money laundering – selected security issues</i> .....   | 33 |
| <b>Radosław Koper</b><br><i>Irregularly obtainment of evidence (article 168a CCP) in the aspect of exclusion of freedom expression of interrogated</i> .....  | 38 |
| <b>Kateryna Kalynets, Yevhen Krykavskyy, Ignacy Petecki, Sylwia Nycz-Wojtan</b><br><i>The emotional surge impact on the formation of a personal brand as an SMM product</i> .....                                     | 45 |
| <b>Aleksander Sapiński</b><br><i>The importance and challenges of information security in the digital age: analysis of the current situation and prospects for development</i> .....                                  | 52 |
| <b>Mariola Adamiec-Witek</b><br><i>Restricting the participation of lay judges in adjudicating civil cases - as a violation of democracy</i> .....  | 56 |

## ***Editorial Words***

*Dear Readers,*

Welcome to the 27th volume, first issue of the ASEJ Scientific Journal of Bielsko-Biala School of Finance and Law. In this number, editorial board present a diverse range of articles that delve into pressing topics within the realms of economics, finance, law, and security. These articles shed light on various aspects of contemporary society and offer valuable insights into the challenges we face today. The first article by Medani P. Bhandari, titled "The Corruption: A Chronic Disease of Humanity: Causes, Effects, and Consequences," examines the pervasive issue of corruption and its profound impact on societies worldwide. Following that, Stanisław Ciupka explores the "Ethical Dilemmas of Contemporary Business," addressing the complex moral challenges faced by companies in the modern business landscape. Michał Comporek's article, "Levels of Reported Financial Result and the Scope of Accrual-Based Earnings Management," focuses on the practices of earnings management within public companies in the clothing industry, providing exemplification studies to illustrate the phenomena. Justyna Fibinger-Jasińska's contribution, "Judicial Review of Illegal Clauses in Consumer Loan Agreements," delves into the legal aspects of consumer protection and the role of the judiciary in scrutinizing loan agreements for potential unfair clauses. Wojciech Jakubiec examines the intricacies of money laundering and its selected security issues in "The Essence of Money Laundering – Selected Security Issues," shedding light on the challenges faced in combating this criminal activity. Radosław Koper explores the exclusion of freedom of expression during interrogations and the irregularly obtained evidence, focusing on Article 168a CCP, in "Irregularly Obtained Evidence (Article 168a CCP) in the Aspect of Exclusion of Freedom of Expression of Interrogated Individuals." "The Emotional Surge Impact on the Formation of a Personal Brand as an SMM Product" by Kateryna Kalynets, Yevhen Krykavskyy, Petecki Ignacy, Sylwia Nycz-Wojtan examines the influence of emotional surges on the formation of personal brands, specifically within the realm of social media marketing (SMM). Aleksander Sapiński's article, "The Importance and Challenges of Information Security in the Digital Age: Analysis of the Current Situation and Prospects for Development," analyzes the current state of information security in the digital age, highlighting its significance and outlining the challenges that lie ahead. Lastly, article by Mariola Adamiec-Witek, which sheds new light on the issue of the conduct of proceedings before common courts with the participation of jurors.

I hope that this issue of the ASEJ Scientific Journal of Bielsko-Biala School of Finance and Law provides valuable insights and stimulates further research in the fields of economics, finance, and law. I extend my gratitude to the authors for their contributions and commend the rigorous academic scholarship demonstrated in their work.

*prof. dr Ihor Halystia*  
*Editor of the ASEJ, Issue 1, Volume 27, 2032.*

# Irregularly obtainment of evidence (article 168a CCP) in the aspect of exclusion of freedom expression of interrogated

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**Abstract**— The Article 168a of Code of Criminal Procedure introduces the rule of the permissibility in criminal proceedings evidence obtained under the violation of criminal procedure regulations or as the result of indictable offence defined in Article 1 of Criminal Code. The Article 168a of CCP is highly controversial, especially due to the lack of linguistic precision of its provision and collision with Constitution. The regulation mentioned above is in conflict with the system of evidence-related prohibitions in criminal proceedings. In this context, the freedom expression rule during the interrogation is essential. Its violation results in the prohibition of the use of evidence. Used in the provision of Art. 168a of CCP, word „exclusively” is claimed to be a key for proper resolution of this problem. If interpreted differently, the provision would flagrantly deny the essence and nature of the freedom expression rule during the interrogation.

**Keywords**— irregularly obtained evidence, permissibility of evidence, freedom of expression, interrogation, criminal proceedings.

## I. INTRODUCTION

In recent years there has been a noticeable tendency of the Polish legislator to regulate the issue of illegality of evidence in legislation. Provisions are introduced, which in a general way standardise the scope of elimination of illegally obtained evidence. This is combined with an attempt to highlight the values preferred by the legislator. In the signalled context, it is Article 168a of the Code of Criminal Procedure, which in a systemic way is supposed to take into account these assumptions and expectations. The cited provision has been subject to amendment changes, but its current version is rather peculiar. One may risk the claim that it is currently one of the most controversial provisions of the Code of Criminal Procedure.

On the other hand, the basic rule of interrogation is the preservation of freedom of expression (Article 171 § 5 and 7 of the Code of Criminal Procedure). It implies a state in which the interrogated person is not subjected to pressures that do not allow him/her to speak freely. The need to observe this rule during interrogation is rather widely accepted. This rule has a strong axiological basis. It ensures the credibility of the interrogation and the correctness of the adjudication and, moreover, protects the dignity of the person interrogated. It is expressly forbidden to influence the statements of the interrogated person by means of coercion and unlawful threats, as well as the use of hypnosis, chemical and technical means affecting the mental processes of the interrogated person or aimed at controlling the unconscious reactions of his/her body in connection with the interrogation (Article 171 § 5 of the Code of Criminal Procedure). As a result, any explanation, testimony or statements in general made under conditions excluding freedom of expression cannot constitute evidence (Article 171 § 7 of the Code of Criminal Procedure). This is an absolute evidentiary prohibition prohibiting the use of evidence. Indeed, no exceptions are provided for in this respect. Such a strong entrenchment of freedom of expression in the criminal procedural system is therefore fully justified.

Meanwhile, it is not clear in which relation the provision of Article 168a of the Code of Criminal Procedure remains with Article 171 § 7 of the Code of Criminal Procedure, as a fundamental provision for freedom of expression. Moreover, a cursory analysis of the content of Article 168a of the Code of Criminal Procedure. may lead to the conclusion that it excludes the evidentiary prohibition set out in Article 171 § 7 of the Code of Criminal Procedure. If this were to be the case, the rule of freedom of expression would be seriously undermined in the Polish criminal procedural order. This article is intended to



serve as a solution to this problem.

## II. LEGAL STATUS DURING THE PERIOD IN WHICH THE 27 SEPTEMBER 2013 AMENDMENT WAS IN FORCE.

For the first time, the legislator addressed the issue of illegality of evidence in general in the Act of 27 September 2013. (Act amending the Act - Code of Criminal Procedure and certain other acts (Journal of Laws of 2013, item 12470), hereinafter: the September amendment). At that time, it introduced the provision of Article 168a, which read as follows: "It shall be inadmissible to conduct and use evidence obtained for the purposes of criminal proceedings by means of a criminal act referred to in Article 1 § 1 of the Criminal Code". This regulation is already historical, but it cannot be ignored. A brief analysis of this provision is necessary in order to be able to properly grasp the genesis and essence of the regulation contained *de lege lata* in Article 168a of the Code of Criminal Procedure in the course of further arguments.

The aim of the regulation introduced by the September amendment was harmonised with other extensive changes to the trial model introduced at that time. In particular, it was about decreeing the increased adversarial nature of the main trial and, as a result, sanctioning the so-called private evidence. In the doctrine, attention was drawn to the need to set limits on the admissibility of evidence collected by trial parties on their own initiative, but on this occasion the possibility of introducing into the trial a great deal of evidence collected by state authorities was also restricted (e.g., Kwiatkowski 2013, p. 489; Kardas 2015, pp. 61-62; Lampert 2015, p. 167). Against the background of the interpretation of Article 168a of the Code of Criminal Procedure, it was rightly pointed out at the time that evidence obtained by means of a criminal act for a purpose other than the introduction and use of evidence in a trial was excluded from its scope (e.g., Stefanski 2015, p. 26; Lach 2014, p. 44; Jasinski 2015, pp. 363-364; Szumiła-Kulczycka 2015, p. 423; Boratyńska 2015, p. 161). In other words, the evidence may have been obtained by means of a criminal act, but this fact did not necessarily prevent the evidence from being conducted and used in the trial when it was obtained for purposes other than those related to the ongoing proceedings. This thesis requires emphasis. Indeed, the illegal acquisition of evidence implied the defectiveness of a particular evidentiary act but did not necessarily result in its inadmissibility. Obviously, this referred only to the variant of illegality, in which the evidence was derived from a prohibited act, as only in this aspect the legislator explicitly pronounced at that time.

The provision in question also gave rise to various doubts of interpretation, but these can be disregarded here. They were irrelevant for the determination of the relationship between this provision in the form determined by the September amendment and Article 171 § 7 of the Code of Criminal Procedure.

It was aptly pointed out in the doctrine that the purpose of Article 168a of the Code of Criminal Procedure was, in the first instance, to discourage trial participants from obtaining evidence in violation of criminal law and to protect them from unlawful actions by persons attempting to gather private

evidence, while of secondary importance was to protect trial authorities from deciding on the basis of uncertain evidence (Lach 2014, p. 43). This was a clear difference from the ratio regulation of Article 171 § 7 of the Code of Criminal Procedure. The guarantee of freedom of expression is closely linked to the protection of the rule of law, but it finds its meaning more in guaranteeing the credibility of the interrogation than in disciplining the trial authorities to respect the law. It can, of course, be argued that the standardisation in the Code of Criminal Procedure of a of a special mode of disqualification of evidence makes it possible to discipline, especially criminal law enforcement bodies, to respect freedom of expression (Świda-Łagiewska 1984, p. 50; Jasiński 2019, pp. 135-143). Ultimately, however, the effectiveness of such an impact depends to a large extent on the extent to which this mode is applied in practice, on how much prosecutors or police officers in particular are able to see and approve of the value of this guarantee.

It was also emphasised in the literature that other provisions regulating evidentiary prohibitions were located outside the scope of Article 168a of the Code of Criminal Procedure, which must have meant that the indicated provision was a general complement to Article 171 § 7 of the Code of Criminal Procedure. (Federowicz 2015, p. 101). In fact, the construction of the regulation of Article 168a of the Code of Criminal Procedure, clearly proved that the legislator did not make any changes to the issue of the validity of the prohibition of evidence on account of the exclusion of freedom of expression. Since Article 168a of the Code of Criminal Procedure concerned both personal and material evidence, while Article 171 § 7 of the Code of Criminal Procedure deals only with personal evidence, it was reasonable to speak of an overlap in the scope of regulation of both provisions in the part concerning personal evidence (Lach 2014, p. 48; Razowski 2015, pp. 150-151). The provision of Article 171 § 7 of the Code of Criminal Procedure, thus constituted a norm *lex specialis* to the norm resulting from Article 168a of the Code of Criminal Procedure. This shape of the relationship was, however, valid only to the extent that the violation of freedom of expression took the form of committing a criminal act within the meaning of Article 1 § 1 of the Code of Criminal Procedure. A common denominator could occur, for example, in the case of the use of coercion or unlawful threats (prohibited methods of interrogation under Article 171 § 5(1) of the Code of Criminal Procedure). This was related to two circumstances:

- 4) a violation of freedom of expression could occur in the case of behaviour aimed at coercing an explanation or testimony at all or with a certain content,
- 5) it would be behaviour undertaken for the purposes of criminal proceedings, as required by Article 168a of the Code of Criminal Procedure. (Koper 2022, p. 437). For the rest, the two regulations were independent of each other.

### III. THE CONSTRUCTION OF THE REGULATION OF ARTICLE 168A OF THE CODE OF CRIMINAL PROCEDURE.

Another amendment of 11 March 2016. (the Act on Amendments to the Act - Code of Criminal Procedure and Certain Other Acts (Journal of Laws 2016, item 437), hereinafter: the March amendment) amended the content of Article 168a. It reads as follows: "Evidence may not be declared inadmissible solely on the grounds that it was obtained in violation of the rules of procedure or by means of a criminal act referred to in Article 1 § 1 of the Criminal Code, unless the evidence was obtained in connection with the performance of official duties by a public officer, as a result of: murder, intentional infliction of bodily harm or deprivation of liberty." Further deductions will be connected with such analysis of this provision as is sufficient and necessary from the point of view of the subject of the study.

It cannot be denied that in the subsequent amendment, the legislator presented a completely different position on the issue of how to deal with illegally obtained evidence. Moreover, it has shown a far-reaching tolerance. The mere fact of obtaining evidence by means of a forbidden act or as a result of infringement of the rules of procedure cannot be deemed *de lege lata* as a circumstance disqualifying evidence. This is notable especially with regard to violations of procedural rules. To date, the doctrine has been dominated by the correct view that, in accordance with the rule of moderate formalism, not every procedural violation concerning the conditions, form and mode of taking evidence excludes the evidence as inadmissible, although it may contribute to removing it from the evidentiary basis due to its unsuitability (free assessment of evidence), since a violation of the law in the course of obtaining or taking evidence may have a different gravity and may concern completely different issues (e.g. Kmiecik 1983, pp. 63-75, 89-90; Sobolewski 1982, pp. 119-120; Gaberle 2010, p. 311; Skorupka 2019, pp. 37-39). Meanwhile, Article 168a of the Code of Criminal Procedure is an expression of the rule of unlimited informality when, in its extreme form, the legislator does not consider a defective act as inadmissible. It has come to distinguish a peculiar rule of evidence assuming that in the case of a defect in evidence consisting in a violation of the rules of procedure or by means of a prohibited act, evidence cannot be declared inadmissible on this basis alone, i.e. at the same time a radically conceived rule of freedom of evidence (Kmiecik 2019, p. 166; Jasinski 2019, p. 504; Stefanski 2019, p. 72; Brzozowski 2016, pp. 62-65). There has been an important disconnection here between the inadmissibility of evidence and its illegality.

The only exception where evidence may be declared inadmissible, and consequently may not be used, relates to obtaining it as a result of murder, intentional infliction of bodily harm or deprivation of liberty, in connection with the performance of official duties by a public official. In this respect, an evidentiary prohibition has been created. Such situations are extremely rare, even extreme, which gives this exception a marginal character. For the rest, evidence cannot be crossed out simply because of the illegality of its acquisition. Opportunities to challenge evidence are, of course, provided by

the free evaluation of evidence carried out mainly by the court before proceeding to judgment (Article 7 of the Code of Criminal Procedure). However, this is a different aspect of the rejection of evidence, involving a substantive assessment of its value.

The constitutionality of Article 168a of the Code of Criminal Procedure has been questioned in the literature. Attention has been drawn to its contradiction with several provisions of the Constitution of the Republic of Poland: article 2 regulating the principle of loyalty of the state towards citizens (being an element of the principle of a democratic state of law), articles 7 and 83 referring to the principle of the rule of law, article 31 para. 3 normalizing the principle of proportionality, Article 40 stipulating the prohibition of torture, cruel, inhuman and degrading treatment and Article 45(1) regarding the fair trial standard (e.g., Stefanski 2018, pp. 45-49; Cora 2018, p. 126; Rychlewska 2016, p. 18; Blonski 2017, p. 91). Indeed, it is unacceptable that public officials can obtain and conduct evidence in contravention of the law, including even in violation of criminal law, when subsequently, on the basis of this evidence, citizens can bear criminal responsibility in accordance with the law (Jasinski 2019, p. 516). This has led to a worsening of the legal position of the individual in his or her relationship with public authorities, especially when one recalls the need for the state to be held accountable for the unlawful actions of the officials representing it. Besides, a criminal act within the meaning of Article 1 § 1 of the Code of Criminal Procedure can be committed by a person who is not a participant in the trial. The content of Article 168a of the Code of Criminal Procedure does not make it possible to exonerate such a person from criminal liability, while the effect of his/her action will be used in a criminal trial.

In addition, the literature proposes an interpretation of Article 168a of the Code of Criminal Procedure that would be in compliance with the Polish Constitution. The relevant interpretation is based on taking into account the meaning of the comma located between the words: "official duties", "as a result". This is supposed to lead to an expansion of the evidentiary prohibition normalized in the final part of this provision, including procedural misconduct within its scope. Advocates of this interpretation thus point out that four situations are covered by this prohibition: - the evidence was obtained in violation of the rules of procedure in connection with the performance of official duties by a public officer, - the evidence was obtained by means of a prohibited act referred to in Article 1 § 1 of the Criminal Code, in connection with the performance of official duties by a public officer, - the evidence was obtained by means of a prohibited act referred to in Article 1 § 1 of the Code of Criminal Procedure and in violation of the rules of procedure in connection with the performance of official duties by a public officer, - the evidence was obtained by means of a prohibited act referred to in Article 1 § 1 of the Code of Criminal Procedure as a result of murder, intentional infliction of damage to health or deprivation of liberty (Skorupka 2017, pp. 362-363; Gruszecka 2017, pp. 65-76). This is undoubtedly a valuable attempt to incorporate a pro-constitutional interpretation. However, the critical remarks that



have been made against this concept in the doctrine should be approved. When we treat the aforementioned comma as an alternative rather than a conjunction, we are aiming at results contrary to the intention of the legislator, i.e., giving the text a meaning, it does not have (Lipinski 2016, p. 47; Prusek 2021, pp. 281-282). In the justification of the March amendment, the legislative motives were indicated quite explicitly. It was about a general exclusion of the possibility to declare evidence inadmissible due to an infringement of the law, and not about an extension of the prohibition provided for in this provision in the light of the September amendment. If the indicated line of interpretation were to be adopted, the prohibition of evidence would de facto be strongly extended. Any evidence obtained in breach of the rules of procedure, even a minor one, would then have to be deemed inadmissible, as long as it was in connection with the performance of official duties by public officials (Jasinski 2019, pp. 517-518). If any breach of procedural rules by a public official in the course of a trial were to render evidence inadmissible, this would amount to an affirmation of the concept of extreme formalism. It is nowadays rejected as unreasonable and, besides, it could in many cases hinder correct factual findings in a trial.

#### IV. THE PROVISION OF ARTICLE 168A OF THE CODE OF CRIMINAL PROCEDURE. IN THE CONTEXT OF THE CODE REGULATION OF EVIDENTIARY PROHIBITIONS

Two views can be discerned in the literature with regard to the clarification of the relationship: Article 168a of the Code of Criminal Procedure. - provisions of the Code of Criminal Procedure. regulating evidentiary bans (including the ban specified in Article 171 § 7 of the Code of Criminal Procedure).

According to the first position, the mentioned provisions are special norms, because since Article 168a of the Code of Criminal Procedure, as a general provision establishing the freedom of evidence, does not exclude them, the evidentiary prohibitions as exceptions to this rule still apply (Stefanski 2018, p. 41; Brzozowski 2017, pp. 57-58; Prusek 2021, p. 260). A modified version is also associated with this view. It concerns the use in Article 168a of the Code of Criminal Procedure. the phrase "exclusively on this basis" and seeing in it the basis for the claim that the provisions regulating evidentiary bans are in force. Supporters of such a thesis indicate that the legislator has thus introduced a mechanism making the previously binding absolute ban on evidence (absolute under the September amendment) more adequate (flexible). This would mean that declaring evidence inadmissible is possible when there is a peculiar overbreadth, i.e. an additional ground in this respect, whereas the mere fact of its illegal acquisition is not a premise for declaring evidence inadmissible. This additional basis is the necessity to take into account the constitutional standard (guarantees arising from the Constitution of the Republic of Poland and the jurisprudence of the Constitutional Tribunal) and the Convention standard (requirements contained in the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights) and, in addition, the necessity to respect precisely the prohibitions on evidence

(Lipinski 2016, pp. 48-51; Plebanek 2018, p. 34; Prusek 2021, pp. 285-287).

The second position is based on a different assumption. It is emphasised that Article 168a of the Code of Criminal Procedure appears to override the Code's evidentiary prohibitions. As part of the justification for this thesis, the following arguments are cited, among others:

- Article 168a of the Code of Criminal Procedure. does not differentiate between violations of procedural law and therefore also applies to the provisions regulating evidentiary prohibitions,
- the codal location of Article 168a indicates that it applies to all defects in the course of the procedural gathering of evidence,
- the provision under consideration was constructed on the principle of negation of the possibility of declaring evidence inadmissible (Jasinski 2019, pp. 513-514).

At the same time, it is emphasised that the exception in this aspect is precisely the evidentiary prohibition of Article 171 § 7 of the Code of Criminal Procedure, as it does not apply to the stage of collecting evidence, but to evidence already obtained, and therefore this provision should be treated as *lex specialis* to Article 168a of the Code of Criminal Procedure (Jasinski 2019, p. 514). Consequently, it has been suggested that the phrase "solely on this basis" within the meaning of Article 168a of the Code of Criminal Procedure should be interpreted as compliance with the constitutional and international legal standard. This implies the obligation of the trial authority to assess in each case whether there is any other basis under the Polish Constitution or international law that could determine the inadmissibility of evidence (Cora 2018, pp. 129-131; Jasinski 2019, pp. 518-519).

When proceeding to verify the presented views of the doctrine, one fundamental thesis must first be rejected. It is unconvincing to argue that the rule of freedom of evidence in Article 168a of the Code of Criminal Procedure. does not override the prohibition of Article 171 § 7 of the Code of Criminal Procedure, since the latter provision concerns the use of evidence and not the gathering of evidence (Koper 2022, p. 446). Following the entry into force of the March amendment, the reference to the use of evidence disappeared in Article 168a of the Code of Criminal Procedure, while it was present in the previous version of this provision established by the September amendment. In fact, Article 168a of the Code of Criminal Procedure. is concerned with the collection, preservation and handling of evidence, as well as with misconduct committed during the performance of these activities, all of which are covered by the common denominator of 'admissibility/inadmissibility'. However, the consequences arising from this provision do not necessarily need to be identified by a literal reference to the name of the evidence stage in question. This is unnecessary, especially when one considers the generally doctrinal nature of this terminology, rather than strictly statutory. Moreover, the procedural context is important. Thus, if, on the basis of this provision, evidence cannot be declared inadmissible when it has been obtained in violation of the rules of procedure or by means of a prohibited

act, it does not appear that the words "has been obtained" completely disregard the prohibition on the use of evidence contained in Article 171 § 7 of the Code of Criminal Procedure. In other words, it does not appear that this prohibition is completely indifferent in this context. It is a non-self-contained prohibition on the use of evidence in the part in which it is a consequence of the violation of another evidentiary prohibition related to the use of inadmissible methods of proof (Article 171 § 5 of the Code of Criminal Procedure). The prohibition of the use of evidence here is the consequence of an impermissible behaviour during the performance of a procedural act. When it comes to other misconduct resulting in exclusion of freedom of expression, not mentioned in Article 171 § 5 of the Code of Criminal Procedure. (e.g. deceit), it is also possible, in a sense, to speak of the unacceptability of the relevant behaviour, even though these other infringements are not explicitly defined by the law. For even then, the prohibition on the use of evidence provided for in Article 171 § 7 of the Code of Criminal Procedure is updated. and in this sense its reliance on the stages of proof is revealed. Despite the fact that the essence of this prohibition concerns the stage of use of evidence, the question of inadmissibility of a certain behaviour appears in the background. In connection with the exclusion of freedom of expression, therefore, there is always the acquisition of evidence in violation of the rules of procedure within the meaning of Article 168a of the Code of Criminal Procedure. And if, according to this provision, the evidence - in principle - cannot be declared inadmissible, despite the fact that one was not allowed to behave in a certain way when taking it, its use becomes permissible. Thus, if Article 171 § 7 of the Code of Criminal Procedure. is not a special norm in relation to the norm set out in Article 168a of the Code of Criminal Procedure, the problem of the impact of the latter on the former remains topical.

On the other hand, another view of the doctrine should be shared. Indeed, the content of Article 168a of the Code of Criminal Procedure is "inexorable" in the sense that evidence cannot be declared inadmissible merely because it was obtained illegally. This proviso must be regarded as the necessity of an additional ground for declaring evidence inadmissible.

It does not appear that the basis for carrying out an interpretation that is pro-constitutional and complies with the Convention standard should be derived from the "solely on that basis" clause. When a trial authority is confronted with the problem of assessing the admissibility of evidence due to its illegal acquisition, it should analyse Article 168a of the Code of Criminal Procedure through the prism of the Constitution of the Republic of Poland and international law, when there is obviously a need to do so, but not because of the said clause. The need to interpret statutory provisions in accordance with the Constitution of the Republic of Poland and the ECHR, even the most controversial ones, does not require that a relevant basis be written in the norms of the statutory rank, and this in a provision that raises doubts of precisely this kind. The necessity to take into account constitutional and international legal values results from the superior role of the Constitution and international agreements in the legal system. In any case, their

legal force is unequivocally confirmed in the provisions of the Constitution of the Republic of Poland (Articles 87(1), 89-91, 188). In any case, the aforementioned necessity is of fundamental importance in the aspect of the issue of evidentiary prohibitions, including the prohibition protecting the rule of freedom of speech specified in Article 171 § 7 of the Code of Criminal Procedure. This is because it allows for the choice of such an interpretative variant, which will comply with the constitutional and convention requirements to the greatest extent.

The provision of Article 168a of the Code of Criminal Procedure was placed in the group of general provisions relating to evidence, and as one of the first in this matter. A systemic interpretation could therefore suggest that, since the general provision on the admissibility of evidence was regulated first and then the Code of Criminal Procedure provides for various provisions on specific issues in this regard, the general provision is dominant. This could be indicative of a very extensive scope of its application, implying a de facto exclusion of the rules governing the prohibition of evidence situated in the Code of Criminal Procedure. further down the line. These provisions, however, are not located only in Section V. Evidence or in subsequent sections of the Code of Criminal Procedure, as some of the evidentiary bans have been normalized in earlier regulations (e.g. the prohibition to prove circumstances revealed during the deliberation and voting on the verdict - Article 108 § 1 of the Code of Criminal Procedure). One may also try to argue the opposite, taking better account of the essence of systemic interpretation and logical interpretation. For if a general provision on the admissibility of evidence is regulated first, the specific norms located later in the Code retain their autonomous force precisely because of their specific nature, and therefore Article 168a of the Code of Criminal Procedure does not exclude their validity (Koper 2022, p. 445).

It cannot be denied that Article 168a of the Code of Criminal Procedure. does not differentiate between violations of procedural law from the point of view of gradation of infringements. It is also difficult to undermine the statement that the invoked provision was constructed in a way that strongly emphasises the inadmissibility of evidence. The indicated circumstances could suggest that also a violation of the norms regulating the prohibition of evidence falls within the scope of application of the provision in question, i.e. it cannot - in itself - be a ground for disqualification of evidence.

However, this would result in unacceptable consequences. The risk of circumventing the rules governing evidentiary prohibitions would always be present. These provisions would be rendered meaningless. There would be a significant undermining of their axiology. This is, after all, about the need to protect important state, social and individual interests, which, although contrary to the interests of the proper administration of justice, are deserving of legal protection and therefore restrict the arrival at the truth in the name of preserving legal goods of higher - in the legislator's opinion - value. A serious breach in the system of procedural criminal law would be introduced, resulting in a complete lack of consistency of the provisions of the Code of Criminal Procedure.

This would be particularly evident in the case of a violation of the evidentiary prohibition linked to freedom of expression and arising from Article 171 § 7 of the Code of Criminal Procedure. It is inconceivable that the explanations of the accused or the testimony of a witness given under the influence of coercion or threats could not be declared inadmissible. In extreme situations, this would lead to relativisation of the prohibition of torture, cruel, inhuman and degrading treatment, which on constitutional grounds (Article 40 of the Constitution of the Republic of Poland) and international law (e.g., Article 3 of the ECHR) is absolute. The rule of freedom of expression would be relativised and, consequently, marginalised. The question may be raised: why assume that the evidentiary prohibition protecting freedom of expression can be lifted, when this could result in worse social consequences than a restriction on the achievement of procedural objectives? With the admission of the possibility of the evidentiary use of the results of an act violating this prohibition, there would certainly be a diminution of its importance, which would have a negative impact on social relations.

The title problem should therefore ultimately be resolved by recognising the decisive significance of the linguistic phrase "solely on this basis". Within its scope, constitutional and convention requirements do not fall, but statutory limitations are actualised. At issue are statutory evidentiary prohibitions. Otherwise, this additional ground for declaring evidence inadmissible would lose its *raison d'être*.

## V. CONCLUSION

There is no doubt that the provision of Article 168a of the Code of Criminal Procedure. is based on an unreasonable assumption. It introduces chaos and confusion in terms of the previous practice of dealing with illegal evidence in a criminal trial. However, the interpretation proposed above leads to the conclusion that the indicated provision does not introduce any change in the protection of the freedom of expression of the interrogated person and does not cause the exclusion of the validity of the prohibition of evidence related to this rule. This is a consequence of assuming that this provision does not eliminate the statutory evidentiary prohibitions at all. Only this line of interpretation preserves the coherence of the criminal procedural rules to some minimum extent.

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