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**PARTICULARITIES OF THE EXCLUSION OF EVIDENCE IN CRIMINAL
PROCEEDINGS**

Speciality 554.03 – *Criminal Procedural Law*

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CONCEPTUAL BENCHMARKS OF THE RESEARCH

Relevance and significance of the chosen topic. Evidence has always represented the essential foundation of criminal justice, constituting the central pillar of any criminal case. The fundamental principles that must be observed in the process of administering evidence are the principle of legality—which requires the administration of only those means of evidence strictly and exhaustively provided by law and under the conditions established by the Code of Criminal Procedure, special laws, and ECtHR jurisprudence—and the principle of loyalty, which prohibits the use of any strategy aimed at administering a means of evidence in bad faith. However, a particularly complex question arises when evidence is obtained in violation of these principles: What measures should be taken when evidence essential for resolving a criminal case has been obtained in breach of legal norms? The answer to this question goes beyond a mere procedural issue; it constitutes a crucial decision with far-reaching implications. It may lead either to the conviction or to the exoneration of a person accused of an offence. At the same time, this decision shapes a legal framework within which fundamental human rights are either protected or violated by the state.

Positioning the Topic within International Scholarship. Procedures for the administration of evidence have evolved over the past three centuries to prohibit the use of certain types of evidence before the courts. With roots in common law doctrine and case law, the exclusion of illegally obtained evidence has gradually developed into a universally recognized and accepted practice. Numerous comparative studies have examined how different legal systems address the issue of excluding unlawfully obtained evidence. In a global context, the rules governing the exclusion of evidence in criminal procedure have developed differently across various jurisdictions. Nevertheless, all regulatory frameworks share a common objective: to establish a normative system that sets clear requirements for the admissibility of evidence, ensuring that courts rely exclusively on accurate, verified, and authentic information when rendering decisions in criminal cases.

The application of the institution of evidence exclusion in criminal proceedings is not merely a matter of domestic regulation within each state; it also forms part of broader international concerns and European regulatory frameworks. The concepts of admissibility and exclusion of evidence are currently at the forefront of debate in European legal scholarship and in the case law of the ECtHR. The core issue concerns “the possibility of deeming admissible evidence obtained by unlawful means.”¹ The ECtHR has

¹ SKORUPKA J. *The rule of admissibility of evidence in the criminal process of continental Europe*. In: Revista Brasileira de Direito Processual Penal, 2021. [online] [cited: 02.09.2025]. Available at: <https://www.redalyc.org/journal/6739/673972096003/html/>

developed extensive and consistent jurisprudence on the exclusion of evidence obtained in violation of fundamental rights, particularly through torture, inhuman treatment, or entrapment.

Questions concerning illegally obtained evidence have been frequently raised, both from the perspective of ensuring the admissibility of evidence obtained in one Member State in the courts of another, and from the perspective of guaranteeing effective remedies for human rights violations within the European Union. The European Union has thus far adopted six Directives establishing common minimum standards regarding the rights of suspected and accused persons in criminal proceedings (Directive 2012/13/EU on the right to information in criminal proceedings², Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty³, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings⁴, Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings⁵, Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings⁶, Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings⁷). The doctrine highlights studies by researchers from European Union Member States who emphasize the need to unify the basic rules on the admissibility and exclusion of evidence at the Union level, given that the EU “has not established regional standards on the admissibility and exclusion of evidence, these matters largely remaining within the scope of international and regional

² Directive 2012/13/EU on the right to information in criminal proceedings. [online] [cited: 02.09.2025]. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:32012L0013>

³ Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. [online] [cited: 02.09.2025]. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32013L0048>

⁴ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. [online] [cited: 02.09.2025]. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32010L0064>

⁵ Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. [online] [cited: 02.09.2025]. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32016L0343>

⁶ Directiva (UE) 2016/1919 din 26 octombrie 2016 privind asistența juridică gratuită pentru persoanele suspectate și persoanele acuzate în cadrul procedurilor penale și pentru persoanele căutate în cadrul procedurilor privind mandatul european de arestare. [online] [cited: 02.09.2025]. Available at: <https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32016L1919>

⁷ Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. [online] [cited: 02.09.2025]. Available: <https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32016L0800>

human rights standards, as well as national legislation.”⁸ Thus, the issue of evidence exclusion constitutes a major concern at the regional level and remains a topic of interest for both legal scholarship and case law, underscoring the importance of continuing research in this field.

Positioning the Topic within National Scholarship. Given the Republic of Moldova’s status as a candidate country for accession to the European Union, the alignment of national criminal procedure with European standards and the effective safeguarding of the right to a fair trial constitute essential prerequisites for strengthening the domestic justice system. The reform of Moldova’s criminal procedural framework forms a central component of the broader efforts aimed at modernizing and adapting the national legal system to EU requirements. The country’s commitment to consolidating a democratic state governed by the rule of law has had a profound impact on the judicial process as a whole and on the institution of evidence in particular.

Despite these developments, the norms governing the procedure for the exclusion of evidence within the Code of Criminal Procedure remain insufficiently elaborated. In particular, the provisions detailing the responsibilities of procedural actors and the mechanisms by which evidence declared inadmissible is to be removed from the case file are still inadequately regulated.

National scholarship in the field of criminal procedural law has highlighted the necessity of revising the legislative framework on evidence exclusion, especially given that criminal proceedings are the context in which fundamental rights and freedoms are most deeply affected. Any assessment of grounds for restricting such rights must be based exclusively on evidence obtained lawfully. In this context, scholars underscore the imperative of clarifying the institution of evidence exclusion, thereby enabling judges to apply exclusionary measures in an objective, consistent, and transparent manner.

Purpose and Objectives of the Research. The purpose of the study is to conduct an in-depth analysis of the exclusion of evidence in criminal proceedings by examining the national and regional normative frameworks, as well as the relevant judicial practice, with a view to identifying existing gaps at the national level and formulating *de lege ferenda* proposals aimed at ensuring the coherent and effective application of the evidence-exclusion mechanism in judicial practice.

In accordance with this purpose, the following objectives have been established:

- to analyse the current state of research on the exclusion of evidence in criminal proceedings, identifying major directions of study and existing contributions within the specialized literature;

⁸ Unlawful evidence in Europe’s courts: principles, practice and remedies. pag. 11. [online] [cited: 02.09.2025]. Available at: <https://www.fairtrials.org/app/uploads/2021/11/DREP-report.pdf>

- to substantiate the exclusion of evidence as a distinct criminal-procedural institution, with emphasis on its theoretical foundations and its applicability within the national criminal procedural system;
- to assess the exclusion of evidence as a criminal-procedural sanction, clearly distinguishing this sanction from other procedural sanctions provided for in national legislation;
- to examine the causes and grounds for excluding evidence under domestic law, in correlation with the relevant case law of the European Court of Human Rights;
- to determine the role and responsibilities of the subjects of the criminal process in applying the exclusion of evidence;
- to analyse the manner in which the evidence-exclusion mechanism operates across the various stages of criminal proceedings, highlighting the particular features of each procedural phase and the mode of application of exclusion;
- to articulate the consequences of evidence exclusion, assessing their impact on the conduct of criminal proceedings, on the rights of the parties involved, and on societal interests as a whole;
- to formulate proposals for improving national legislation and judicial practice, taking into account international standards and best practices in criminal procedure, with the aim of ensuring the correct and effective application of the rules governing the exclusion of evidence.

Research Hypothesis. The research hypothesis of the doctoral thesis concerns the analysis of evidence exclusion in criminal proceedings as an autonomous institution, independent of other procedural regulations. It is presumed that the exclusion of evidence obtained unlawfully is not merely a procedural matter but constitutes a distinct and complex legal institution that significantly affects the validity of the criminal process and the integrity of the justice system. At the same time, the hypothesis is based on the premise that not all procedural aspects of evidence exclusion are fully regulated and that the specific actions to be undertaken by procedural actors (judges and prosecutors) are not clearly defined, generating uncertainties in the application of this institution. In this context, the research aims to identify these gaps and propose solutions for the proper regulation of the evidence-exclusion procedure, thereby contributing to the uniform and coherent application of this institution in criminal proceedings.

Summary of the Research Methodology and Justification of the Selected Methods. To ensure the theoretical and scientific foundation of the study, I applied several general-scientific methods. Induction and deduction were used to formulate conclusions derived from particular cases and, respectively, to test hypotheses based on general principles. The systemic analysis method served to examine the exclusion of evidence within the context of the criminal procedural system as a whole. Comparative analysis was

essential for assessing the differences and similarities between legal systems, with the aim of identifying best practices applicable to the national context.

The logical method was employed to ensure a rigorous interpretation of the relevant criminal procedural norms, particularly regarding the meaning of the concepts of admissibility and exclusion of evidence, as well as their delineation from other procedural institutions. The historical method served to identify the evolution of the institution of evidence exclusion, both in national law and in comparative law, highlighting the way in which this institution was borrowed from common law jurisprudence and adapted within continental legal systems.

Empirical Basis of the Research. The empirical basis of the research comprises several relevant components: the jurisprudence of the European Court of Human Rights, the Constitutional Court of the Republic of Moldova, and the Constitutional Court of Romania, as well as the analysis of national case law, through which the practical application of the evidence-exclusion mechanism was examined.

Additionally, as part of the research, an opinion survey was conducted, serving as a quantitative research instrument designed to collect the perceptions and experiences of practitioners (judges and prosecutors) regarding the issues encountered in the field of evidence exclusion, as well as their views on the necessity of legislative amendments in the area under study.

Scientific Novelty. The scientific novelty of the research lies in its comprehensive approach to the theoretical and practical-scientific aspects of the institution of evidence exclusion in criminal proceedings, a topic that has been insufficiently explored in national scholarship. This study seeks to supplement the research previously undertaken in the field, highlighting new dimensions in the development of criminal procedural law. The analysis conducted has allowed for the formulation of conclusions with a substantial degree of originality, contributing both to the advancement of criminal procedure doctrine and to the optimization of the practical application of procedural norms by judicial authorities.

Theoretical Significance and Practical Value. The theoretical significance and practical value of the study lie in the deepening and systematization of existing knowledge in the field of evidence exclusion in criminal proceedings. The thesis explores fundamental concepts such as the legality of evidence, fairness of criminal proceedings, the fundamental rights of the parties involved, and the inadmissibility of evidence, analyzing how these concepts are regulated and applied in practice. It provides a comparative perspective, drawing lessons from the experiences of other legal systems, and proposes reform directions that may contribute to a more coherent and equitable criminal procedural framework. The issues examined add theoretical value by developing new arguments and solutions that can influence both the theoretical interpretation of evidence exclusion and its practical application. At the same time, the study highlights

problems arising in national practice. Thus, it offers both scholars and practitioners in the field of criminal procedure a useful guide for the effective application of rules concerning evidence exclusion within criminal proceedings. Furthermore, the findings may support the development of educational and continuing training programs for professionals in criminal procedural law. The proposed legislative improvements may also serve as a foundation for future reforms, aiming to establish a clearer and more effective legal framework regarding the exclusion of unlawfully obtained evidence.

Approval of the Results. The results of the research conducted in the thesis have been presented at national and international scientific conferences, including abroad, and have been reflected in scientific publications.

Eleven (11) scientific works have been published on the topic of the doctoral thesis.

Volume and Structure of the Thesis: 244 pages of main text, comprising: an introduction, three chapters, general conclusions and recommendations, a bibliography of 228 titles; one annex; a statement of responsibility; and the author's CV.

Keywords: evidence, probatory material, admissibility, inadmissible evidence, exclusion, legality, loyalty.

CONTENT OF THE THESIS

Chapter I, entitled *Analysis of the Scientific Situation Regarding the Exclusion of Evidence in Criminal Proceedings*, includes reflections on the doctrine of evidence exclusion in criminal proceedings in the Republic of Moldova, Romania, as well as in other countries, including the United States of America, the United Kingdom, Belgium, the Russian Federation, France, and others.

The works of Western authors such as Panzavolta M., Maes E., Mosna A., Marcus P., Miller J., Ogiso R., Tomkovicz J.J., Jasiński W., and Kremens K. were analyzed. These authors conducted numerous comparative studies across different legal systems to examine how various states approach the issue of excluding illegally obtained evidence. In the doctrine, debates persist regarding the proportionality between the gravity of the legal violation and the necessity of using unlawful evidence to ascertain the truth in a criminal trial. The specialized literature examining evidence exclusion in civil law jurisdictions highlights that, despite apparent differences, the rules governing evidence exclusion in these states display certain common features. At the same time, the rule of exclusion has been intensely debated in terms of its necessity in criminal proceedings, as it may conflict with the principle of truth-finding. It is argued in this thesis that the institution of evidence exclusion is essential to criminal proceedings, ensuring the protection of the fundamental rights of the parties involved.

Evidence exclusion has been addressed both theoretically and practically in numerous studies by national researchers, including Dolea I., Vizdoagă T., Osoianu T., Roman D., Sedlețchi I., Șterbeț V., Rotaru V., Burbulea C., Caminschi I., and Rusu V., who explored multiple aspects of this topic, from the definition of illegally obtained evidence and the grounds for its exclusion, to the presentation and analysis of ECtHR jurisprudence on the exclusion of unlawful evidence. Romanian authors whose research has focused on evidence exclusion—such as Udroiu M., Chiriță C-M., Mateuț Gh., Barbu D., Petrea A., Ionescu D., Damaschin M., Neagu I., Crișu A., Vasiliu A., Ciobanu A., and Zarafiu A. present diverse opinions regarding the legal nature of evidence exclusion and the application of this procedural sanction in practice.

Following this analysis, the extent of scholarly investigation into the topic of the doctoral thesis was determined, the core scientific problem addressed by the research was formulated, and the main objectives and aims of the study were established.

Chapter II, entitled *Regulation of Evidence Exclusion in Criminal Procedural Law*, is dedicated to the theoretical analysis of the notion and rationale of evidence exclusion as both an institution and a criminal-procedural sanction. The chapter also establishes a distinction between procedural sanctions—

nullity and evidence exclusion—and examines the grounds that justify the exclusion of evidence from a criminal case.

In the doctrine, evidence is attributed a dual nature: epistemological, as a means of understanding reality, and procedural, as an instrument for proving it before the court. Conceptually, it is necessary to distinguish between the notion of “evidence” and that of “means of evidence,” the former referring to the factual content and the latter to the procedural form through which information is introduced into the evidentiary process. In this context, the admissibility of evidence is configured as a fundamental procedural guarantee, conditioning its use on the observance of the principles of legality, relevance, conclusiveness, and utility.

The chapter addresses the concepts of admissibility, inadmissibility, and exclusion, which are frequently used in the same context in the specialized literature. Admissibility refers to the capacity of evidence to be accepted in order to contribute to the ascertainment of the truth. For evidence to be admissible, it must be presented by a competent subject, through the appropriate means provided under Article 93 of the Code of Criminal Procedure, and in accordance with the proper procedural requirements. Inadmissibility represents the legal status of the evidence, whereas exclusion is a procedural mechanism with a dual effect. First, exclusion prevents the prosecution from presenting evidence to support its accusation and prove guilt. Second, it prevents the court from relying on such evidence to establish guilt and, where there is an obligation to provide reasoning, from using the evidence to justify a finding of guilt in a motivated judgment.

The development of the institution of evidence exclusion has evolved continuously alongside criminal procedural law. Generally, the specialized literature notes that “the rule of exclusion was born in the eighteenth century, between 1740 and 1770, expanded in the nineteenth century, and matured in the twentieth century.”

Evidence exclusion constitutes a genuine legal institution that is an integral part of criminal procedural law. Within the criminal procedural system, the role of evidence exclusion is to protect the integrity of the judicial process by eliminating evidence obtained unlawfully, through violations of procedural norms, or through infringements of the fundamental rights of the parties involved. The complexity of this institution arises from the fact that it is regulated by a body of legal norms found both in national legislation and in international treaties, as well as in the jurisprudence of the European Court of Human Rights, with the aim of ensuring respect for fundamental rights and the conduct of a fair trial.

The implementation of the institution of evidence exclusion in the criminal procedural legislation of various states is grounded in several considerations: “deterring abusive behavior by law enforcement

authorities, protecting and guaranteeing the procedural rights of persons accused of committing offenses, and preserving the integrity of the judicial process.”⁹

This chapter presents divergent views that have emerged in the specialized literature regarding the distinction between the nullity of procedural acts and the exclusion of evidence. Some scholars equate evidence exclusion with the application of the sanction of nullity, while others argue for its distinct character. The present research aligns with the latter perspective.

Under the current regulation, Articles 251–251² of the CPP) provide that nullity operates in two forms—absolute and relative—depending on the gravity of the violation and the nature of the interest harmed. Absolute nullity is based on a legal presumption of harm and may be invoked at any time, whereas relative nullity requires proof of harm and may be remedied through acceptance of the act by the interested party. Evidence exclusion, established legislatively under Article 94 of the CPP, has a distinct legal nature and is applicable exclusively within the evidentiary sphere. It sanctions the illegality of obtaining evidence, regardless of the existence of demonstrable harm, and operates automatically, without the possibility of being remedied by the parties’ consent. Evidence exclusion constitutes the specific sanction applicable to evidence, regulating and penalizing violations related to evidentiary procedures. In contrast, nullity constitutes a general sanction applicable in other procedural contexts when fundamental procedural rules are violated, affecting the validity of the entire process or specific procedural acts. Nullity applies when a procedural act is carried out in violation of essential legal requirements and affects related procedural acts, whereas evidence exclusion concerns the invalidity of evidence obtained through illegal procedures without impacting other procedural acts. The procedural sanction of nullity implies that if an act is performed in violation of a procedural rule, it will be declared null and void, i.e., lacking validity. Consequently, evidence exclusion constitutes an independent procedural sanction, founded on the principles of legality and loyalty in the administration of evidence, aimed at guaranteeing respect for fundamental rights and ensuring fairness in criminal proceedings.

The criminal procedural legislation of the Republic of Moldova imposes high standards for the application of the principles of legality and loyalty in the administration of evidence. “Article 94 of the CPP establishes the full set of circumstances whose presence excludes the use of evidence in criminal proceedings, including the requirement to reference such evidence in a judicial decision or other court

⁹ WEIGEND Th. *Exclusion without trial? Exclusion of evidence and abbreviated procedures*. În: Revista Brasileira de Direito Processual Penal vol. 7, nr. 1 2021. pag. 249. [online] [cited: 02.09.2025]. Available: <https://doi.org/10.22197/rbdpp.v7i1.502>.

rulings, such as appellate or cassation decisions.”¹⁰ A closer analysis of Article 94 CPP shows that it encompasses situations requiring both automatic exclusion of evidence and discretionary exclusion.

Firstly, under Article 94(1) pct. 1) CPP, evidence obtained through the use of violence, threats, or other means of coercion, in violation of the rights and freedoms of the person, is deemed inadmissible.¹¹ For the purposes of this provision, “violence is understood as the use of brute force, coercion, compulsion, or violation of legal order; a threat consists of an intention to cause harm to someone to intimidate them or to obtain something; coercion involves means by which someone is forced to do something they would not do voluntarily, or activities that compel through the violation of a person’s rights and freedoms.”¹² Analyzing the formulation of Article 94(1) pct. 1) CPP, it is clear that the drafters fully satisfied the requirement set forth in Article 3 of the European Convention on Human Rights (ECHR), prohibiting the obtaining of evidence through torture, inhuman or degrading treatment, as well as threats of such treatment.

According to Article 94(1) pct. 2) CPP, evidence obtained in violation of the right to defense of the suspect, accused, defendant, injured party, or witness is inadmissible. Failure to respect the right to defense triggers the application of the evidence exclusion sanction. Article 94(1) pct. 3) CPP prohibits the obtaining of evidence in violation of the right to an interpreter for participants in the proceedings. Violating the accused’s right to assistance from an interpreter constitutes a serious infringement of the right to a fair trial, as it prevents effective participation in the procedural proceedings.

Article 94(1) pct. 4) CPP establishes the rule of inadmissibility of evidence administered by a person who does not have the authority to perform procedural actions in a criminal case, with the exception of control bodies and other parties in the proceedings referred to in Article 93(3) CPP. According to doctrine, this rule originates from the principle that evidence obtained by an incompetent subject is inadmissible.¹³ Article 94(1) pct. 5) CPP provides for the exclusion of evidence administered by a person who knowingly falls within the scope of disqualification. The “knowledge of the source” rule, as a condition of admissibility, is enshrined in Article 94(1) pct. 6) CPP, which excludes evidence obtained from a source that cannot be verified during the trial. Within the context of the source knowledge rule, most debates focus on the issue of evidence from anonymous witnesses.

¹⁰ DOLEA I., ROMAN D., VÎZDOAGĂ T., SEDLETCHI I., ȘTERBEȚ V., ROTARU V. *Codul de Procedură Penală. Comentariu*. Chișinău: Ed. Cartier, 2005. ISBN 9975-79-342-8. pag. 172

¹¹ *Ibidem*, pag. 172

¹² *Ibidem*, pag. 173

¹³ DOLEA, I. *The Code of Criminal Procedure of the Republic of Moldova* (Applied Commentary, 2nd Edition). Chișinău: Cartea Juridică, 2020. 1480 p. ISBN 978-9975-3418-0-6. pag. 322

The inadmissibility of evidence obtained through methods that contravene scientific standards, provided for in Article 94(1) pct. 7) CPP, remains a controversial issue in doctrine. This stems from the fact that the concept of “scientific standards” lacks clear legislative definition and may be interpreted differently depending on the evolution of scientific knowledge. Pursuant to Article 94(1) pct. 8) CPP, evidence obtained in material violation of the provisions of the Code of Criminal Procedure by the investigative body or the investigating officer is inadmissible. When assessing inadmissibility, the court must determine in each specific case the extent to which such violations have affected, or could have affected, the authenticity of the information obtained, the document, or the object.¹⁴

According to Article 94(1) pct. 9) CPP, data that has not been examined in the manner prescribed during the trial cannot form the basis of a judgment or other court decisions. Consequently, evidence must be presented in a public hearing, in the presence of the defendant, to guarantee the adversarial procedure, ensuring that both the prosecution and the defense have the opportunity to examine and comment on the submissions and evidence presented by the opposing party. Another ground for exclusion is when evidence originates from a person who cannot verify the document or object in question, confirm its authenticity, provenance, or the circumstances under which it was received. Generally, this provision addresses the inadmissibility of evidence in terms of veracity.¹⁵

Article 94(1) pct. 11) CPP prohibits obtaining evidence by inducing, facilitating, or encouraging a person to commit an offense. Normative, doctrinal, and case-law analysis confirms that inducement constitutes a serious violation of the principle of loyalty in evidence administration, and the only appropriate sanction is the exclusion of such evidence. Article 94(1) pct. 12) CPP addresses situations in which evidence is obtained through the promise or granting of an advantage not permitted by law. Doctrine emphasizes that illegal forms of influence cannot be exhaustively listed; however, establishing liability for such practices through the procedural sanction of evidence exclusion is essential.

Through Article 94(5) CPP, the national criminal procedure has incorporated the “fruit of the poisonous tree” doctrine, stipulating that derivative evidence shall be excluded if it was obtained on the basis of illegally-obtained evidence, except where the derivative evidence is grounded in an independent source or would have been inevitably discovered. Among the three doctrines that operate as exceptions to the exclusionary rule and permit the use of derivative evidence (the attenuation doctrine, the independent source doctrine, and the inevitable discovery doctrine), the national legislator has incorporated only two

¹⁴ *Ibidem*, pag. 325

¹⁵ *Ibidem*, pag. 327

through Article 94(5) CPP: the independent source doctrine and the inevitable discovery doctrine.¹⁶ We consider that this choice was made by the national legislator in light of the fact that, although the U.S. Supreme Court has advocated a cautious approach, the attenuation doctrine is one of the most heavily criticized by Western scholars, who argue that the numerous incentives it creates for abusive practices diminish the deterrent effect of the exclusionary rule.

Chapter 3 examines the *Impact of evidence exclusion on criminal proceedings*, with particular reference to: the role of procedural actors in applying the institution of evidence exclusion; the mechanisms for excluding evidence during the criminal investigation phase; the specific features of evidence exclusion at trial; the consequences of evidence exclusion for the course of criminal proceedings. The chapter concludes with the findings to Chapter 3. It also presents the results of a survey conducted among judges and prosecutors regarding their perceptions of the particularities of evidence exclusion in criminal cases. In designing the questionnaire, the majority of practical issues concerning the exclusion of evidence were taken into consideration, including questions on the need to amend or supplement the legislation in this field, as well as practitioners' views regarding existing gaps in the CPP and the author's own proposals for legislative reform.

It is highlighted that, during the criminal investigation, the prosecutor may initiate actions to verify the admissibility of evidence—and accordingly exclude inadmissible evidence—in the following situations: ex officio, during the investigative phase, upon examining the materials of the criminal case, particularly when investigative actions involve interference with individual rights and freedoms (for example, verifying the results of a search); during the review of the case materials and procedural actions carried out at the stage of closing the criminal investigation pursuant to Article 290 CPP; when examining complaints filed by participants in the criminal proceedings under Articles 298–299¹ CPP; during participation in hearings before the investigating judge within the framework of judicial control over the pre-trial procedure.

When examining the procedure for the exclusion of evidence within the review of complaints filed under Articles 298–299¹ CPP, it becomes apparent that this mechanism is closely linked to the principle of “equality of arms,” as reflected in the case-law of the European Court of Human Rights. At this stage, the prosecutor is required to assess each alleged procedural violation that may affect the integrity of the evidentiary material.

¹⁶ LEONTIEVA, S. *The Code of Criminal Procedure: the “fruit of the poisonous tree” doctrine and derivative evidence*. In: *Journal of the National Institute of Justice*, No. 2(73), pp. 14–19. ISSN 1857-2405. pag. 16

Within the framework of hierarchical control, the superior prosecutor reviews the legality of the actions undertaken by the case prosecutor and may dismiss the complaint, uphold it, or order the withdrawal of the case and its reassignment to another prosecutor where serious irregularities in evidence administration are identified.

It has been highlighted that the superior prosecutor is vested with the authority to oversee the activity of subordinate prosecutors and to intervene where irregularities are detected, including those concerning the administration of evidence. Where the need to exclude evidence arises, tensions may emerge between hierarchical oversight and the procedural independence of prosecutors. The analysis conducted supports the view that the decision to exclude evidence should, as a rule, remain within the competence of the case prosecutor, while the superior prosecutor's role is to remedy irregularities through lawful mechanisms—such as withdrawing the criminal case and assigning it to another prosecutor—without substituting the decision-making autonomy of prosecutors conducting or supervising the criminal investigation.

In light of Article 313 CPP, we conclude that the investigating judge, similar to the judge of rights and freedoms in the Romanian system, does not possess the functional competence to order the actual exclusion of evidence obtained during the criminal investigation. At the same time, the investigating judge may declare the nullity of unlawful procedural acts, which implicitly results in the removal of evidence obtained through null acts. It is observed that the irrevocability of the investigating judge's rulings creates practical limitations on the re-examination of the admissibility of evidence at trial.

The study demonstrates that the defence counsel's activity is not confined to presenting evidence in favour of the accused, but also encompasses an active role in identifying, challenging, and seeking the exclusion of evidence obtained unlawfully or in breach of procedural rules—this dimension constituting a central element of the defence function. The provisions of Articles 67–68, Article 94, and Articles 298–299¹ CPP emphasise the distinct procedural position of the defence counsel, who is vested with a set of specific rights enabling participation in investigative actions, the submission of objections regarding procedural irregularities, the filing of motions and complaints seeking the exclusion of illegal evidence, and active contribution to ensuring adversarial proceedings and equality of arms. The direct participation of the defence in the administration of evidence thus constitutes an essential safeguard against potential abuses or the use of unlawful means in the collection of evidence.

The research has shown that the stage of presenting the criminal investigation materials constitutes a decisive moment for identifying inadmissible evidence, as the defence counsel is required to conduct a comprehensive examination of the entire case file and to submit motions for the exclusion of evidence or

for the completion of the investigation whenever irregularities are detected. At the same time, it has been demonstrated that the defence retains the ability to reiterate arguments concerning the inadmissibility of evidence during the trial phase. Thus, maintaining an active role of the defence throughout the entire criminal process is indispensable for ensuring the legality of the evidentiary material and for safeguarding the fundamental rights of the accused.

The findings of the study confirm that the defence counsel, as a procedural subject engaged in fulfilling the defence function, plays an essential role in verifying the legality of the evidence, alongside the criminal investigation bodies and the court.

When analysing the role of the court in excluding evidence in criminal proceedings, it is important to note that in Romania, “the preliminary chamber represents an essential filter within the criminal process, tasked with examining the legality of the referral to the court and of the acts carried out during the criminal investigation before the case proceeds to trial.”¹⁷ The preliminary chamber judge “verifies the legality of the indictment issued by the prosecutor, reviews the legality of the administration of evidence and the procedural acts performed by the criminal investigation bodies, and resolves complaints against decisions of non-prosecution or non-indictment...”¹⁸ Thus, unlike Romania, where the institutions of the judge of rights and freedoms and the preliminary chamber judge ensure effective judicial control over the legality of the criminal investigation, in the Republic of Moldova the powers of the investigating judge are considerably more limited. The investigating judge may assess the legality of evidence within the procedures brought before them, but cannot order the actual exclusion of unlawfully obtained evidence, which creates the risk that inadmissible evidence may nonetheless reach the trial judge.

The normative analysis further highlights the difficulties arising from the absence of an institution equivalent to the Romanian preliminary chamber, which verifies the legality of the indictment, the investigative acts, and the evidence administered. According to data obtained from the conducted survey, 53% of practitioners consider it appropriate to introduce such an institution in the Republic of Moldova, while 69% support extending the competences of the investigating judge in matters of evidence exclusion. The study therefore proposes supplementing Article 313 of the CPP with an explicit competence to examine and order the exclusion of unlawfully obtained evidence.

¹⁷ DIACONU C. *The preliminary chamber judge may issue one of the following solutions.* [online] [cited: 02.11.2023]. Available at: <https://avocatdiaconu.ro/judecatorul-de-camera-preliminara-poate-pronunta-una-dintre-urmatoarele-solutii/>

¹⁸*Ibidem*

With regard to the role of the trial court during the merits phase, the judge is required to assess the evidence administered in the courtroom under the principles of adversarial procedure and orality, verifying its legality, relevance, probative value, usefulness, and credibility.

In the examination of the criminal case on the merits, considerable importance is attached to judicial discretion in managing and excluding evidence. As noted above, in recent years the laws have also been amended to expand this discretion, so that judges are no longer strictly required to exclude certain types of evidence.

According to Article 101(1) of the CPP, the judge must evaluate each piece of evidence in terms of its relevance, probative value, usefulness, and credibility, and assess all evidence as a whole from the perspective of their corroboration. It may be observed that this paragraph does not include an obligation to assess evidence in terms of its admissibility. This requirement is set out in Article 101(4) CPP, which establishes that the court may base its decision only on evidence to which all parties have had equal access during the proceedings, and must provide reasons in its judgment regarding the admissibility or inadmissibility of all evidence administered. Therefore, the judge must verify compliance with the legal conditions of admissibility, excluding evidence that fails to meet the statutory standards necessary to ensure a fair trial. When excluding evidence, “judges rely on regional and international human rights standards to justify the exclusion of unlawful evidence in cases involving serious violations.”¹⁹

Regarding the mechanism for excluding evidence from the criminal case during the investigative phase, its function is that of an evidentiary barrier, an obstacle to admissibility, or a procedural filter. An analysis of the national application of this mechanism shows that the primary purpose of Article 94 CPP is to establish the conditions under which certain information obtained cannot be admitted as evidence in criminal proceedings. However, with respect to the specific procedure for exclusion, Article 94 merely states that evidence obtained in violation of the law “shall be excluded from the file, may not be presented before the court, and may not serve as a basis for the judgment or other judicial decisions”, without detailing the mechanisms or procedural steps through which this exclusion must be performed. This legislative gap has generated controversy and debate both in doctrine and in judicial practice.

The opinion that the normative framework governing the exclusion of evidence requires supplementation is also confirmed by the results of the survey conducted: 86.5% of respondents believe

¹⁹ LEONTIEVA S., TODERICA V., *Explorarea regulii admisibilității probelor în procesul penal: o analiză teoretică și practică*. În: Revista Studia Universitatis Moldaviae (Seria Științe Sociale), Nr. 3(173). ISSN 1814-3199/ISSN 2345-1017. pag. 203

that the legal regulations in this area need amendment or improvement, while only 13.5% expressed the opposite view.

The Code of Criminal Procedure leaves to the discretion of the prosecutor the decision to exclude evidence throughout the entire duration of the criminal investigation. Thus, while the prosecutor exercises supervisory and control functions over the legality and loyalty of evidence-gathering during the investigation, the exclusion of evidence is not confined to a specific procedural moment but may occur at any stage of the criminal process. In the investigative phase, the national legislator has incorporated within the notion of “*exclusion*” two distinct concepts: exclusion not only renders the evidence inadmissible as a means of proof, but also entails its effective removal from the case file. Physical exclusion implies the actual extraction of the evidence from the file so that the trial judge cannot be influenced, either directly or indirectly, by its content.

With regard to the storage of evidence excluded during the investigative phase, a legislative gap is evident, as neither Article 290 nor Article 211 of the CPP establishes a clear retention period for such evidence.

The analysis further reveals that the current regulatory framework governing the defence’s access to the criminal investigation materials in the Republic of Moldova generates a significant imbalance between the prosecution and the defence, thereby undermining both the principle of adversarial proceedings and the equality of arms. Although legal doctrine underscores the non-public character of the criminal investigation, this characteristic cannot be interpreted exclusively in favour of the investigative authorities. The consistent case-law of the ECHR emphasizes that access to the case file constitutes an essential component of the equality of arms and of the right to have adequate time and facilities for the preparation of the defence. The Moldovan Code of Criminal Procedure grants significantly more limited access rights to the accused and the defence, allowing consultation of the case file only after the completion of the investigation. At the same time, injured parties and other procedural participants benefit from much broader access, resulting in a disproportionality that is incompatible with the principle of equality of arms.

Under the domestic procedural framework, once the evidence included in the criminal case and in the indictment has been transmitted to the trial court for examination on the merits, there is no explicit mechanism ensuring the effective exclusion of such evidence from the case materials. A frequently encountered issue in judicial practice concerns situations where, during the preliminary hearing, the defence requests a finding of inadmissibility of certain pieces of evidence submitted by the prosecution. Under the current procedure, the court cannot order the exclusion of evidence following the preliminary

hearing or during the evidentiary stage of the trial. In its Inadmissibility Decision No. 56g/2018²⁰, the Constitutional Court held that, at the preliminary hearing, only the relevance of the evidence may be examined, whereas motions for exclusion fall outside the limits of this procedure, pursuant to Article 347(3) of the CPP.

Thus, another aspect examined in the survey concerned the appropriate moment for verifying the legality of evidence. When asked whether this assessment should be carried out together with the examination of the merits of the case, during the trial phase, 68.5% of respondents answered in the affirmative, considering that such timing ensures a complete and contextualized evaluation. Only 31.5% expressed an opposing view. In our assessment, excluding evidence at this preparatory stage enables the court to rule on the admissibility and relevance of evidence before the commencement of the evidentiary proceedings proper, thereby preventing such evidence from remaining in the judge's consciousness throughout the trial.

An analysis of the Constitutional Court's Inadmissibility Decision No. 47 of 22 May 2018 reveals that it likewise fails to clarify the concrete mechanisms for excluding evidence during the trial phase.

The judicial examination constitutes the central component of the trial, during which the court, while giving full effect to the principles of criminal procedure, examines all available evidence in order to establish the factual circumstances of the offence.²¹ Accordingly, in our view, it is natural that motions for the exclusion of evidence be adjudicated at this stage.

Current practice shows that, in the absence of clear regulatory provisions, courts tend to address the exclusion of evidence directly in the judgment. Deciding motions for exclusion within the text of the judgment, in our view, contradicts Article 385 of the Code of Criminal Procedure, which lists the matters to be resolved by the court when delivering the judgment, as well as Articles 389 and 390, which do not refer to issues that must be decided at the moment of pronouncing the judgment, nor do they pertain to the content of the reasoning section of a conviction or acquittal. This problem becomes even more pronounced in the simplified procedure (Article 364¹ CPP), where the verification of the legality of evidence depends largely on the accused or the prosecutor, potentially allowing illegally obtained evidence to be used.

²⁰ Decision of the Constitutional Court No. 47 of 22 May 2018 on the inadmissibility of the referral concerning the exception of unconstitutionality of certain provisions of Article 94(1) of the Code of Criminal Procedure (exclusion of evidence from the criminal case). [online] [cited: 02.11.2024]. Available at: <https://www.constcourt.md/ccdocview.php?l=ro&tip=decizii&docid=472>

²¹ RUSU V., GHERASIM D., BOTNARU C. *The place and role of judicial examination within the phase of examining the criminal case at first instance*. In: *Avocatul Poporului* (Scientific-practical and informational law journal), 2016, Nos. 1–3. pag. 23

An analysis of the doctrinal literature on the consequences of excluding evidence shows that “within the continental legal system, there is no coherent or unified theory regarding the effects of evidence obtained by state authorities through illegal methods or means, nor concerning its presentation before the court.”²²

The survey conducted among the legal community reveals that the exclusion of evidence is perceived as having a significant impact on criminal proceedings. Thus, 39.7% of respondents consider that it strongly affects the outcome of the case, 32.9% believe it considerably influences the course of the proceedings, while 20.5% assess the effect as moderate, depending on the existence of other evidence. Only 6.8% consider that the impact is minimal, and no respondent expressed the view that the exclusion of evidence has no influence on the process. The exclusion of certain evidence during the criminal investigation phase may also lead to consequences that hinder the prosecution of the person responsible for the offence.

The research findings indicate that the exclusion of evidence significantly influences the final outcome, being frequently associated with the pronouncement of acquittals, the withdrawal of charges, or the reclassification of the offence. At the same time, empirical observations show that the phenomenon of evidence exclusion during the investigative phase is relatively rare.

The study highlights the importance of applying the compensatory mechanisms provided for in Article 385(4) of the CPP, as well as the jurisprudence of the ECtHR, in order to ensure a balance between the State’s right to hold offenders accountable and the protection of the accused’s fundamental rights. The results of the survey conducted among practitioners underscore the need for staff training, the implementation of standardized protocols, and the use of advanced technologies for evidence management as effective measures for preventing evidence exclusion and strengthening a fair and efficient criminal process.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The results obtained in the present doctoral thesis are reflected in the following: the analysis of the legal mechanisms for the exclusion of evidence in common law and civil law systems (144, pp. 47–63); the determination of the concepts of admissibility, inadmissibility, and exclusion of evidence within

²² KUCZYŃSKA H. *Mechanisms of elimination of undesired evidence from criminal trial: a comparative approach*. Revista Brasileira de Direito Processual Penal, vol. 7, no. 1, 2021. [online] [cited: 02.11.2024]. Available at: <https://www.redalyc.org/journal/6739/673972096002/html/>

criminal procedural law (139, pp. 70–71); the examination of the “fruit of the poisonous tree” doctrine and derivative evidence in the domestic procedural legislation (136, pp. 136–142); the elucidation of the concepts of “evaluation of evidence” and the “standard of proof” in criminal procedural law (138, pp. 157–181); the analysis of the ex officio review carried out by the prosecutor during the criminal investigation phase (140, pp. 149–166); the analysis of the methodology for assessing illegally obtained evidence in criminal proceedings, particularly with regard to aspects related to judicial discretion (142, pp. 178–181). The study also examined the role of the European Court of Human Rights in establishing standards for the exclusion of evidence, and analyzed the Court’s case law in this field, demonstrating that the ECtHR plays a key role in developing and modernizing the protection of human rights in matters concerning the exclusion of evidence. Likewise, the reasoning underlying the exclusion of evidence, as shaped in the ECtHR’s jurisprudence, was elucidated, offering states guidance for evaluating unlawfully obtained evidence, as well as the arguments justifying the necessity of its exclusion.

Following the comprehensive examination of the topic addressed in this doctoral thesis, the important scientific problem underlying the research has been resolved. This problem consists in the theoretical and practical substantiation of the institution of evidence exclusion in criminal proceedings, achieved through the identification of its specific features and the determination of its role within criminal procedural law. The study also clarifies the relationship between the principles of legality and loyalty in the administration of evidence, thereby contributing to the consolidation of the doctrinal foundations of the institution of evidence exclusion. Furthermore, the research led to the development of a coherent conceptual framework on the inadmissibility and exclusion of evidence by elucidating the conditions and circumstances under which evidence obtained illegally or in violation of procedural rules must be removed from the criminal case file.

The resolution of the important scientific problem has been demonstrated through the conclusions formulated on the basis of the research hypothesis, as follows:

1. The exclusion of evidence, as currently understood, is a relatively recent legal institution that developed in the twentieth century through the jurisprudence of common law courts, as a response to the need to safeguard fundamental rights in criminal proceedings. Subsequently, the principles of this institution were adopted and adapted in continental legal systems, including in the criminal procedural legislation of the Republic of Moldova. (See: Chapter I, subchapters 1.1, 1.2)

2. The rule of admissibility of evidence is a legal construct designed and developed by the national legislator to achieve specific procedural objectives, while inadmissibility constitutes one of the guarantees ensuring compliance with the principle of legality, requiring the removal of all procedural acts

not prescribed by law. Although the Code of Criminal Procedure does not provide an explicit definition of inadmissibility or exclusion of evidence, it establishes rules and guarantees that prohibit the use of evidence obtained in violation of the law. Thus, the admissibility of evidence is not determined solely by the criteria expressly set out in Article 95 CCP—namely relevance, conclusiveness, and usefulness—but fundamentally requires compliance with the principles of legality (respect for all legal provisions governing the administration of evidence) and loyalty (which concerns, in particular, the manner in which evidence is obtained). (See: Chapter II, subchapter 2.1)

3. The existence of the institution of evidence exclusion transcends the technical framework of criminal procedural law, being closely linked to fundamental philosophical principles. It balances the interests of the state—aimed at protecting society and sanctioning criminal offences—against those of the individual, who must retain his or her fundamental rights and liberties. In our view, the arguments underlying the existence of the institution of evidence exclusion are well-founded and highly compelling. (See: Chapter II, subchapter 2.1)

4. The grounds for the exclusion of evidence set out in the Code of Criminal Procedure reflect both recent developments in the case law of the ECtHR and the influence of common-law traditions. ECtHR judgments have served as reference points for Member States—including the Republic of Moldova—in revising and improving their national legislation on evidence exclusion. However, „the ECtHR consistently reaffirms its limited role in defining standards for the admissibility of evidence, leaving these matters largely within the discretion of Member States.”²³ (See: Chapter II, subchapter 2.3)

5. Our analysis of the causes and grounds giving rise to the exclusion of evidence has revealed certain uncertainties. In our view, in practice there may arise confusion regarding the correct procedural sanction applicable where the right to an interpreter has been violated. Article 94(1)(3) CCP provides for the inadmissibility of evidence obtained in breach of a participant’s right to an interpreter or translator, while Article 251¹ lit. (e) CCP establishes the application of absolute nullity where the provisions on the mandatory presence of an interpreter or translator have been infringed. Thus, where the absence of an interpreter affects a mandatory procedural act that does not constitute a means of evidence, the appropriate sanction is absolute nullity. Conversely, where the irregularity concerns a means of evidence, the provisions of Article 94 CCP apply.

²³ LEONTIEVA S. *The role of the European Court of Human Rights in establishing standards for the exclusion of evidence*. In: *Integration through Research and Innovation: Legal and Economic Sciences*, 7–8 November 2024, Chișinău. Chișinău, Republic of Moldova: Editorial-Polygraphic Center of Moldova State University, 2024. ISBN 978-9975-62-798-6. pag. 367

Another uncertainty concerns the ground for the exclusion of evidence provided under Article 94(1) pct. 4) CCP. We observe that both Article 94(1) pct. 4) and Article 93(3) CCP refer to the administration of evidence by *control bodies*, yet the notion of a “control body” is neither defined nor regulated by the Code of Criminal Procedure. In the absence of a legal definition of this term, the application of the provisions governing the admissibility of evidence administered by such entities remains unclear and susceptible to divergent interpretations. Consequently, legislative intervention is required to clarify this concept through an explicit regulation within the Code of Criminal Procedure. (See: Chapter II, subchapter 2.3)

6. A significant personal contribution lies in the analysis of the role and responsibilities of the judge, prosecutor, and defence counsel in applying the exclusion of evidence. The study examined situations in which the prosecutor verifies the admissibility of evidence and, where appropriate, excludes inadmissible evidence at the investigation stage, highlighting that the prosecutor exercises rigorous control over the criminal investigation in order to identify and prevent violations of the law and of fundamental rights. It was also demonstrated that the prosecutor is under a duty to ensure that the defence has timely access to information concerning the process of evidence administration.

The essential role of the defence is to challenge violations of the law or of fundamental rights in the administration of evidence as early as possible in the proceedings. Moreover, the defence must ensure that any decision of the prosecutor or the court rejecting challenges to the legality of evidence is duly reasoned. We concluded that, in practice, decisions on the admissibility of evidence are most often postponed until the trial on the merits and are taken by the judge. (See: Chapter III, subchapter 3.1)

7. The mechanism for the exclusion of evidence at the investigation stage operates through the *physical exclusion* of the means of evidence, requiring its physical removal from the case file (See: Chapter III, subchapter 3.2). By contrast, the exclusion of evidence at trial concerns only the *legal exclusion* of the evidence, meaning that the court is obliged not to take the content of that evidence into account when delivering the final judgment (See: Chapter III, subchapter 3.3).

8. The research conducted demonstrates that the exclusion of evidence in criminal proceedings has a direct impact on judicial outcomes, as it may significantly alter the structure and probative value of the evidence presented by the prosecution, often leading to acquittals. The emergence of doubts regarding the admissibility of evidence generally results in the prolongation of criminal proceedings and increased procedural costs. (See: Chapter III, subchapter 3.4)

9. Improper conduct by investigative bodies that subsequently leads to the exclusion of evidence has a substantial impact on public perceptions of the fairness and effectiveness of the justice system. Thus,

in order to prevent the negative consequences associated with evidence exclusion, and alongside improving the legal framework governing this mechanism, it is necessary for the authorities to adopt training measures and to develop standardised regulations for the collection and handling of evidence. (See: Chapter III, subchapter 3.4)

The most relevant practical contribution consists in the fact that the analysis carried out in this thesis has enabled the formulation of the following *lege ferenda* proposals:

1. Expanding the powers of the investigating judge in order to enhance the effectiveness of judicial oversight at the investigation stage, allowing judicial intervention to ensure the legality and fairness of the evidence administered. In this regard, we propose supplementing Article 313(2) CCP with letter f), with the following content: *to exclude evidence obtained in breach of Article 94 CCP.*

2. Supplementing Article 290(1) CCP with provisions expressly establishing the period for which evidence physically excluded from the criminal case file during the investigation stage must be preserved: *Excluded evidence shall be kept in the archive of the authority that administered it, under the conditions provided by Article 211(2), for a period of one year following the date on which the judgment in the criminal case from which it was excluded becomes final. After this period, if the evidence is not used in other criminal or contravention cases, the prosecutor shall order its destruction by ordinance, except where its preservation is necessary for other legal proceedings.*

3. In order to comply with international standards regarding the right to defence, we propose supplementing Article 68 CCP with paragraph (8), enabling defence counsel to consult the materials of the criminal case during the investigation stage: *Defence counsel shall consult the materials of the criminal case as follows: 1) Defence counsel has the right to request access to the case file throughout the criminal proceedings. This right may not be restricted or exercised abusively. 2) During the investigation stage, the prosecutor shall set the date and duration of the consultation within a reasonable time. 3) Defence counsel's access to the case materials may be restricted by the prosecutor, by a reasoned ordinance, where the restriction is imposed for a reasonable period of time, relates only to specific procedural acts, and where full access may prejudice the conduct of the investigation or the security of the parties. The prosecutor's ordinance may be challenged before the investigating judge under Article 313. 4) During the investigation stage, defence counsel is obliged to maintain the confidentiality of the data and documents accessed during the consultation of the file. 5) Within 15 days from the date on which counsel becomes acquainted with the case materials, the defence may submit reasoned requests for the exclusion of evidence where it is established, at this stage, that the evidence was obtained in breach of Article 94 of this Code.*

4. To strengthen the principle of equality of arms, we propose supplementing Article 94 CCP with paragraph (6), as follows: *Data obtained in breach of the conditions set out in paragraph (1) may be used by the defence where necessary.* Accordingly, Article 345 CCP should be supplemented with paragraph (5), with the following content: *Defence counsel may request the court, by a reasoned motion, to use evidence excluded at the investigation stage where such evidence is essential for demonstrating innocence or for constructing an effective defence.*

5. From our perspective, in order to supplement the current provisions and permit the examination of the admissibility of evidence at the preliminary hearing, Article 345(4) CCP should be supplemented with point 7), as follows: *The parties have the right to request the exclusion of any evidence from the list of evidence submitted in the judicial proceedings. Where grounds for exclusion under Article 94 CCP are established, the judge shall admit the motion and order the exclusion of the respective evidence. If the examination of issues related to the exclusion of the evidence cannot be carried out without assessing its substance, the judge shall postpone the examination of the motion until the stage of the judicial inquiry, in order to allow for a full evaluation of the evidence.*

6. Based on the preceding proposal, it is likewise necessary to supplement Article 347(3) CCP with the following text: *The court, after hearing the views of the parties present, shall decide on the relevance and admissibility of the evidence proposed in the lists and shall order which items are to be presented at trial.*

7. To strengthen the mechanism of evidence exclusion at the stage of examining the criminal case on the merits and to ensure the parties' ability to prepare effectively for the judicial debates, we propose supplementing Article 376 CCP, which regulates the closing of the judicial inquiry, with paragraph (4), as follows: *Where, after examining all evidence in the case file, grounds for inadmissibility under Article 94 of this Code are established, the presiding judge shall issue a ruling ordering the exclusion of the evidence from the criminal case materials.*

The legal and empirical basis of the study consisted of:

a) the provisions of Article 94 et seq. CCP; b) investigative and judicial practice; c) procedural criminal law regulations from other jurisdictions; d) the results of an opinion survey conducted among judges and prosecutors; e) the case law of the European Court of Human Rights concerning standards applicable to the admissibility of evidence and the right to a fair trial. *The scientific basis* of the study comprises works by domestic and foreign authors, including significant contributions from the specialised literature of both the civil-law and common-law traditions. Doctrinal studies offering comparative analyses of these two

legal families, especially regarding the regimes governing the admissibility and exclusion of evidence in criminal proceedings, were likewise utilised.

The theoretical significance of the dissertation lies in clarifying the conceptual foundations and the scientific-practical dimensions of the institution of evidence exclusion in criminal proceedings. By identifying conceptual and normative gaps, the study contributes to clarifying the place and role of the exclusion mechanism within the criminal process, the limits of its application, and the theoretical grounding of exclusion procedures at both the investigation and trial stages, along with defining the essential responsibilities of the procedural actors involved in applying this mechanism. The dissertation contributes to the development of criminal-procedure doctrine by formulating conclusions and interpretations that may serve as reference points for scholars and practitioners, supporting the need to strengthen procedural safeguards concerning illegally obtained evidence.

The practical value of the dissertation lies in the fact that its results may be used in the professional activity of judges, prosecutors, and defence lawyers, providing guidance for the interpretation and application of rules governing admissibility, inadmissibility, and exclusion of evidence. Likewise, the *lege ferenda* proposals elaborated in the thesis may serve as a basis for legislative reform, contributing to the improvement of the procedural-criminal framework. The thesis may also be used in teaching, in university courses on criminal procedure.

Approval of the results. The scientific results and core conclusions of the dissertation were discussed at meetings of the Department of Criminal Procedure and Forensics, and subsequently at the meetings of the Department of Procedural Law of the Moldova State University. The research findings were presented in the author's publications in specialised national journals and in abstracts of papers presented at national and international scientific conferences.

Limitations of the study. This constitutes the first attempt to provide a comprehensive analysis of the specific features of evidence exclusion in domestic criminal proceedings, which makes comparison with earlier studies in the same field difficult. Second, the research relied predominantly on a quantitative approach, using the questionnaire as the principal data-collection instrument and not being complemented by qualitative methods such as in-depth interviews. Third, although criminal cases in which the exclusion mechanism was applied were analysed, it is reasonable to assume that, given time constraints and the very large number of files stored in the archives of investigative bodies and courts, a significant number of other relevant cases were not included in the sample examined.

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ADNOTARE

**Leontieva Svetlana, „Particularitățile excluderii probelor în procesul penal”,
Teză de doctor în drept, la specialitatea 554.03 – Drept procesual penal. Chișinău, 2026**

Structura tezei: Introducere, trei capitole, concluzii generale și recomandări, bibliografia constituită din 239 titluri, 244 pagini de text de bază. La tema tezei au fost publicate 11 (unsprezece) lucrări științifice (publicații, conferințe).

Cuvinte-cheie: probe, probatoriu, admisibilitate, date neadmise ca probe, excluderea, legalitate, loialitate.

Scopul lucrării constă în realizarea unui studiu aprofundat al excluderii probelor în procesul penal, prin examinarea cadrului normativ național și regional, precum și a practicii judiciare relevante, în vederea identificării lacunelor existente la nivel național și formulării unor propuneri de lege *ferenda* menite să asigure aplicarea coerentă și eficientă a mecanismului excluderii probelor în practica judiciară.

Obiectivele cercetării: analiza situației științifice în domeniul excluderii probelor în procesul penal; fundamentarea excluderii probelor ca instituție procesual-penală distinctă; evaluarea excluderii probelor ca sanctiune procesual-penală; cercetarea temeiurilor de excludere a probelor din cadrul cauzelor penale, în corelație cu jurisprudența relevantă a CtEDO; stabilirea rolului și atribuțiilor subiecților procesului penal în aplicarea excluderii probelor; analiza modalității de aplicare a mecanismului de excludere a probelor în cadrul diferitelor faze ale procesului penal; formularea consecințelor excluderii probelor; formularea propunerilor de îmbunătățire a legislației naționale și a practicii judiciare.

Noutatea și originalitatea științifică constă în abordarea aspectelor teoretice și științifico-practice ale instituției excluderii probelor în procesul penal, un subiect relativ insuficient explorat în doctrina autohtonă. La fel, au fost clarificate raporturile dintre principiile legalității și loialității în administrarea probelor, contribuind astfel la consolidarea fundamentelor doctrinare ale instituției excluderii probelor. Cercetarea a condus la dezvoltarea unui cadru conceptual coherent privind inadmisibilitatea și excluderea probelor, prin elucidarea temeiurilor în care probele obținute nelegal sau cu încălcarea normelor procedurale trebuie eliminate din dosarul penal.

Problema științifică importantă soluționată în domeniul de cercetare constă în analiza particularităților excluderii probelor, cu scopul de a dezvolta un cadru teoretic aplicabil pentru identificarea și aplicarea corectă a acestei instituții procesual-penale. Au fost elucidate condițiile și circumstanțele în care probele obținute ilegal sau prin încălcarea normelor procesuale trebuie excluse din dosarul penal, clarificându-se astfel noțiunile de inadmisibilitate a probelor și excludere a acestora din cadrul procedurii penale. Astfel, cercetarea a contribuit la optimizarea doctrinei procesual-penale, oferind propuneri concrete și bine argumentate pentru îmbunătățirea legislației și remedierea lacunelor existente.

Semnificația teoretică constă în elucidarea fundamentelor conceptuale și a dimensiunilor științifico-practice ale instituției excluderii probelor în procesul penal. Prin identificarea lacunelor conceptuale și normative, lucrarea contribuie la clarificarea locului și rolului instituției excluderii în procesul penal, limitelor aplicării acesteia, precum și fundamentarea teoretică a mecanismelor de excludere, atât în faza de urmărire penală, cât și în faza de judecată. Teza aduce o contribuție la dezvoltarea doctrinei prin formularea unor concluzii care pot constitui puncte de referință pentru teoreticieni și practicieni.

Valoarea practică constă în formularea unor soluții privind excluderea probelor, cu scopul de a asigura respectarea efectivă a drepturilor fundamentale ale participanților la proces. Rezultatele cercetării pot fi valorificate în activitatea practică a judecătorilor, procurorilor și avocaților, oferind repere pentru interpretarea și aplicarea normelor referitoare la admisibilitatea, inadmisibilitatea și excluderea probelor. De asemenea, propunerile de *lege ferenda* pot servi drept bază pentru eventuale inițiative legislative.

Implementarea rezultatelor științifice. Rezultatele științifice și concluziile de bază ale prezentei teze de doctorat au fost puse în discuție la ședințele Catedrei Drept procesual penal și Criminalistică, ulterior ale Departamentului Drept Procedural al Universității de Stat din Moldova. Rezultatele investigațiilor științifice au fost prezentate în 5 publicații în reviste de specialitate din țară și în rezumate ale comunicărilor prezentate la conferințele științifice naționale și internaționale.

АННОТАЦИЯ

Леонтьева Светлана, «Особенности исключения доказательств в уголовном процессе», Диссертация на соискание ученой степени доктора юридических наук по специальности 554.03 – Уголовно-процессуальное право. Кишинев, 2026.

Структура диссертации: введение, три главы, общие выводы и рекомендации, библиография, состоящая из 239 наименований, 244 страниц основного текста. По теме диссертации опубликовано 11 (одиннадцать) научных работ (публикации, конференции).

Ключевые слова: доказательства, доказательственная база, допустимость, сведения, недопустимые в качестве доказательств, исключение, законность, лояльность.

Цель работы заключается в проведении всестороннего исследования исключения доказательств в уголовном процессе посредством анализа национальной и региональной нормативно-правовой базы, а также соответствующей судебной практики, с целью выявления существующих пробелов на национальном уровне и выработки поправок, направленных на обеспечение последовательного и эффективного применения механизма исключения доказательств в судебной практике.

Задачи исследования: анализ научного состояния в области исключения доказательств; обоснование исключения доказательств как самостоятельного уголовно-процессуального института; оценка исключения доказательств как уголовно-процессуальной санкции; исследование оснований исключения доказательств по уголовным делам в практике ЕСПЧ; определение роли и полномочий субъектов уголовного процесса в исключении доказательств; анализ порядка применения механизма исключения доказательств на различных этапах уголовного процесса; анализ последствий исключения доказательств; выработка предложений по совершенствованию национального законодательства.

Научная новизна и оригинальность диссертации заключаются в рассмотрении теоретических и научно-практических аспектов института исключения доказательств в уголовном процессе — тематики, относительно недостаточно исследованной в отечественной доктрине. Были уточнены соотношения принципов законности и лояльности при собирании и исследовании доказательств, что способствовало укреплению доктринальных основ института исключения доказательств. Исследование позволило сформировать целостную концептуальную базу относительно недопустимости и исключения доказательств, с разъяснением тех оснований, при которых доказательства, полученные незаконным путем либо с нарушением процессуальных норм, подлежат устраниению из уголовного дела.

Важная научная проблема, решённая в рамках исследования, состоит в анализе особенностей исключения доказательств с целью разработки теоретически обоснованного подхода к правильному применению данного уголовно-процессуального института. Были выявлены условия и обстоятельства, при которых доказательства, полученные незаконно или с нарушением процессуальных норм, подлежат исключению из материалов уголовного дела, что позволило уточнить понятия недопустимости доказательств и их исключения из уголовного процесса. Исследование способствовало развитию уголовно-процессуальной доктрины, предложив конкретные и аргументированные меры по совершенствованию законодательства и устраниению существующих пробелов.

Теоретическая значимость состоит в раскрытии концептуальных оснований и научно-практических аспектов исключения доказательств. Работа способствует уточнению места и роли института исключения доказательств, пределов его применения, а также теоретическому обоснованию механизмов исключения как на стадии уголовного преследования, так и в судебной фазе. Диссертация вносит вклад в развитие доктрины, формулируя выводы для теоретиков и практиков.

Практическая ценность выражается в разработке решений, касающихся исключения доказательств, направленных на обеспечение эффективной защиты фундаментальных прав участников процесса. Результаты исследования могут быть использованы в практической деятельности судей, прокуроров и адвокатов, предоставляя ориентиры для толкования и применения норм, касающихся допустимости, недопустимости и исключения доказательств. Предложения о законодательных поправках могут служить основой для возможных законодательных инициатив.

Внедрение научных результатов. Основные научные результаты и выводы настоящей диссертации были обсуждены на заседаниях Кафедры уголовного процесса и криминалистики, а также впоследствии — на заседаниях Департамента процессуального права МГУ. Результаты были представлены в 5 публикациях и в тезисах докладов на национальных и международных научных конференциях.

ANNOTATION

Svetlana Leontieva, *“Particularities of Evidence Exclusion in Criminal Proceedings”*,
Doctoral Thesis in Law, Specialty 554.03 – Criminal Procedure Law. Chisinau, 2026.

Thesis Structure: Introduction, three chapters, general conclusions and recommendations, and a bibliography comprising 239 sources, with a total of 244 pages of core text. Eleven (11) scientific works related to the topic of the thesis have been published (articles, conference papers).

Keywords: evidence, evidentiary framework, admissibility, inadmissibility, exclusion, legality, loyalty.

Purpose of the Study is to conduct an in-depth study of the exclusion of evidence in criminal proceedings by examining the national and regional regulatory framework, as well as relevant judicial practice, in order to identify existing gaps at the national level and to formulate proposals aimed at ensuring the coherent and effective application of the evidence-exclusion mechanism in judicial practice.

Research objectives: to analyze the state of scientific knowledge in the field of exclusion of evidence in criminal proceedings; to substantiate the exclusion of evidence as an autonomous procedural institution; to assess the exclusion of evidence as a procedural sanction; to examine the grounds for excluding evidence in criminal cases in correlation with the relevant case law of the ECtHR; to determine the role and responsibilities of the actors involved in criminal proceedings in applying evidence exclusion; to analyze the manner in which the mechanism for excluding evidence is applied at various stages of the criminal process; to identify the consequences of excluding evidence; to formulate proposals for improving national legislation and judicial practice.

Scientific novelty and originality: lie in addressing the theoretical and practical aspects of the institution of evidence exclusion in criminal proceedings—an area relatively underexplored in domestic doctrine. The thesis also clarifies the relationship between the principles of legality and loyalty in the administration of evidence, thereby strengthening the doctrinal foundations of the institution of evidence exclusion. The research contributes to the development of a coherent conceptual framework regarding the inadmissibility and exclusion of evidence by elucidating the grounds on which evidence obtained unlawfully or in violation of procedural rules must be removed from the criminal case file.

Major scientific problem addressed: consists in analyzing the particularities of evidence exclusion with the aim of developing a theoretical framework applicable to the proper identification and implementation of this procedural institution. The study elucidates the conditions and circumstances under which evidence obtained illegally or in breach of procedural norms must be excluded from the criminal case, thereby clarifying the concepts of inadmissibility of evidence and its exclusion within criminal proceedings. The research thus contributes to the enhancement of criminal procedural doctrine by offering concrete and well-reasoned proposals for improving legislation and remedying existing gaps.

Theoretical significance: lies in elucidating the conceptual foundations and scientific-practical dimensions of the institution of evidence exclusion in criminal proceedings. By identifying conceptual and normative gaps, the thesis clarifies the place and role of evidence exclusion in the criminal process, the limits of its application, and the theoretical grounding of exclusion mechanisms during both the investigative and trial stages. The thesis advances doctrinal development by formulating conclusions that may serve as reference points for scholars and practitioners.

Practical value: consists in formulating solutions concerning the exclusion of evidence in order to ensure the effective protection of the fundamental rights of participants in criminal proceedings. The results of the research may be used in the practical work of judges, prosecutors, and defense attorneys by providing guidance for interpreting and applying the rules governing admissibility, inadmissibility, and exclusion of evidence. Furthermore, the proposals for legislative amendment may serve as a basis for future legislative initiatives.

Implementation of scientific results of this doctoral thesis were discussed during the meetings of the Department of Criminal Procedure and Criminalistics, and later within the Department of Procedural Law at the Moldova State University. The research findings were presented in 5 publications in specialized national journals and in abstracts of papers delivered at national and international scientific conferences.

LEONTIEVA SVETLANA

**PARTICULARITIES OF THE EXCLUSION OF EVIDENCE IN CRIMINAL
PROCEEDINGS**

Speciality 554.03 – *Criminal Procedural Law*

Summary of the doctoral thesis in law

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