

# *On the Application of the "Fruit of the Poisonous Tree" in Criminal Proceedings*

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**Abstract:** The entry into force of the "Two Evidence Provisions" and the newly amended Criminal Procedure Law has led to the establishment of the rule of excluding illegal evidence in China, which is of great significance to the protection of human rights in the entire criminal field. It is necessary to interpret the application of the doctrine of the fruit of the poisonous tree in China's criminal proceedings, to clarify the necessity of its application and the criteria for its application, so as to enhance the effectiveness of the application of the rule on the exclusion of illegal evidence.

## 1. Introduction

In June 2010, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued the Provisions on Several Issues Concerning the Examination and Judgment of Evidence in Death Penalty Cases (hereinafter referred to as the Provisions on Evidence in Death Penalty Cases) and the Provisions on Several Issues Concerning the Exclusion of Illegal Evidence in Criminal Cases (hereinafter referred to as the Provisions on the Exclusion of Illegal Evidence). The "Two Evidence Provisions" establish the principles of evidence adjudication and a series of rules for reviewing and judging evidence, which are particularly important for the construction of rules on the exclusion of illegal evidence in criminal proceedings.

With the implementation of the "Two Evidence Provisions", the application of the rules on the exclusion of illegal verbal evidence has received sufficient attention both in academic circles and in judicial practice. However, it should be noted that the exclusionary rule does not only prohibit the application of evidence obtained directly in the course of an illegal search and seizure, but also includes the prohibition of the application of derivative evidence obtained by using information obtained through an illegal search as a clue. This kind of derivative evidence is also known in theory as the "fruit of the poisonous tree". The general theory is that China's Criminal Procedure Law, judicial interpretations and relevant normative legal documents do not provide for the theory of the fruit of the poisonous tree, and this has created a gap in China's judicial practice forbidding the consumption of the fruit of the poisonous tree.

In this article, on the basis of a review of the theory of the fruit of the poisonous tree, the relevant legal provisions in China's existing laws are explained, their meaning in judicial application is clarified, and the necessity of the application of the fruit of the poisonous tree in China's criminal proceedings is argued, in order to refute the academic community's neglect of the importance of the fruit of the poisonous tree and correct the misinterpretation of the rules on the exclusion of illegal evidence in judicial practice.

## **2. The problem: the Misinterpretation of the Rule of Excluding Illegal Evidence and the Generation of Wrongful Cases**

Case: Zhang's uncle and nephew "rape and murder" case

On the night of May 18, 2003, Zhang Gaoping and his nephew Zhang Hui drove a large truck from She County to Shanghai. They were entrusted to let their female compatriot Wang Mou who went to Hangzhou to take a ride. The next day at 10 a.m., Wang's body was found in a ditch on the side of Liusi Road in Hangzhou's West Lake District. 4 days later, Zhang Gaoping and Zhang Hui fell into the case at the place where Wang got into the car. on April 21, 2004, Hangzhou Central Court sentenced Zhang Hui to death and Zhang Gaoping to life imprisonment; on October 19 of that year, the Zhejiang High Court finally commuted the sentence to death for the main offender Zhang Hui and 15 years of imprisonment for the accessory Zhang Gaoping. on November 22, 2011 On November 22, 2011, the Hangzhou Municipal Public Security Bureau will be the victim Wangmou 8 nail end wipe filter paper isolated from a male DNA analysis than. The DNA in the victim's nails matched the DNA of Gou Haifeng, who had been executed 6 years ago. 26 March 2013, the Zhejiang Provincial High Court reversed the original verdict and acquitted the truck driver Zhang Gaoping and Zhang Hui.

In recent years, unjust and wrongful cases have occurred frequently, in addition to the two wrongful cases cited by the author above, there are also doubly public concern in Henan Zhao Zuohai case, Hubei She Xianglin case, Yunnan Sun Peiwu case, Hebei Nie Shubin case and so on. The repeated occurrence of wrongful cases on the one hand makes the innocent suffer from punishment and pain, on the other hand, the real culprit is at large, the more terrible is that the real criminals will extend their criminal hands to more victims, causing new and greater harm, which seriously infringes on the authority of the law and judicial justice, to a certain extent, also weakened the public's trust in the judiciary.

How do wrongful cases arise? Professor Chen Xingliang pointed out: "to obtain a guilty confession to solve the case, which is a shortcut to investigate the case, of course, over-reliance on confessions, and even the use of illegal ways to obtain confessions, is precisely the road to wrongdoing. Behind every criminal wrongdoing, there is basically a dark shadow of torture to force confessions, it can be said that although torture to force confessions is not 100 percent of the wrongful convictions, but almost 100 percent of the wrongful cases are the result of torture to force confessions." [3] In these unjust and false cases, on the one hand, the public prosecution and law departments do not have their own duties, the public security organs do not pay attention to the doubts in the case and insist on subjective assumptions; the procuratorial organs do not perform the function of supervision and investigation, and still prosecute with insufficient evidence; the courts all adopt the opinions of the public security organs, ignore the reasonable opinions of defense lawyers, and do not recognize illegal evidence. On the other hand, the subsidiary value of torture to force a confession should not be underestimated, Huang Aibin, Zhang's uncle and nephew suffered torture to force a confession for two reasons, one is to force them to admit the facts of the crime, to obtain the much-valued confession; the second is the hope that through the suspect's confession, to obtain clues to the key physical evidence related to the case.

In addition, through the analysis of the above two cases, I found that another important factor leading to wrongful convictions is the use of derivative evidence obtained under torture confessions in the process of determining the facts of the case, the theory of this type of evidence is called the fruit of the poisonous tree.

In our current judicial practice, it does not mean that as long as the verbal evidence obtained under torture is excluded, the above two wrongful cases will not necessarily occur. The reason is that other evidence derived from this verbal evidence, i.e. the fruit of the poisonous tree, is still admissible, and such derived evidence may still lead to wrongful cases together with other circumstantial evidence. As the above table shows, in the case of Huang Aibin, the burning residue found in Huang's stove by the police based on Huang Aibin's confession also belongs to the derivative evidence of illegal verbal evidence, and in the case of Zhang's uncle and nephew, the testimony of Yuan Lianfang, the jailer, belongs to the derivative evidence of illegal verbal evidence. Even if the two cases of torture after the confession is excluded, Yuan Tingfang's testimony, burning residue found in the stove in judicial practice will still be adopted as evidence of guilt, and may further lead to the occurrence of unjust cases. Based on this situation, I think it is necessary to study the theory of the fruit of the poisonous tree, so that it can be used as part of the rules for the exclusion of illegal evidence to avoid the occurrence of wrongful cases to the greatest extent possible.

### **3. Analysis of the Problem: The need for the Application of the Fruit-of-the-poisonous-tree Theory in our Criminal Proceedings**

#### **3.1. Introduction of the Fruit of the Poisonous Tree Theory**

The fruit of the poisonous tree is a figurative metaphor for the admissibility of a certain kind of evidence in criminal proceedings, the evidence obtained due to illegal arrest, search, interrogation or identification procedures is compared to the "poisonous tree", and the secondary evidence or derived evidence obtained from this illegal evidence as a clue is compared to the "poisonous fruit". The fruit of the poisonous tree rule originated in the 1920 case of *Silverthorne, Inc. v. United States*. In this case, federal agents unlawfully withheld books and records, but the defendant obtained a court order authorizing their return. The agents complied with the judge's order, but photographed the requested items before returning the books and records. At trial, the prosecution requested that the court issue a subpoena (subpoena) for these documents based on these photographs. The Supreme Court has held that subpoenas issued on the basis of information obtained from illegal searches are invalid[9]. In that case, the U.S. Federal Supreme Court reinterpreted the rule against improperly obtained evidence, stating that the rule not only refers to the inadmissibility of direct evidence obtained by such illegal means, but also denies the legality of derivative evidence obtained from first-hand evidence. Specifically, the derivative evidence must first be determined whether it has been "tainted" by a prior unconstitutional or otherwise illegal act, or, in the terminology used by Justice Frankfurter, whether it is the "fruits of a poisonous tree," and if it is determined that the evidence is "tainted" by a prior unconstitutional or otherwise illegal act, it must be determined that it is the "fruits of a poisonous tree. The mere finding that the derivative evidence is the "fruit of the poisonous tree" justifies its exclusion.

The need for the application of the fruit-of-the-poisonous-tree theory in our criminal proceedings. The Fruit of the Poisonous Tree rule was originally formed in violation of the Fourth Amendment to the federal Constitution, which prohibits the unlawful search and seizure of the persons, houses, papers, and property of the people. However, the U.S. Supreme Federal Court has held that it violates the Fifth Amendment to the Constitution (The Fifth Amendment to the U.S. Constitution states that "No person shall be compelled in any case to incriminate himself."), the Sixth

Amendment (The Sixth Amendment to the U.S. Constitution gives defendants the right to confront witnesses against themselves and the right to have critical mitigation or assistance of counsel in criminal proceedings). and constitutional due process evidence should also be excluded, thus greatly expanding the scope of the fruit of the poisonous tree rule.

However, the implementation of the rule directly affects the punishment and control of crime and has led to public outcry. In the face of such pressure, the federal Supreme Court justices had to impose restrictions on the application of the fruit of the poisonous tree rule, and thus created a number of exceptions to the application of the rule. These exceptions include: the independent source exception, which means that evidence is admissible if it has an independent source completely unrelated to the violation; and the attenuated causal link exception, which refers to a situation in which the causal link between the violation by the public authority and the resulting evidence is legally broken, recognizing the actual existence of the causal link but holding that the link has It recognizes the actual existence of this causal link, but considers that the link has weakened to the point where it can be legally judged as non-existent. In short, it considers the "toxin" of the fruit of the poisonous tree to have been greatly diminished and therefore tolerated, which is actually a legal fiction. The third inevitable discovery exception means that even without the illegal act, the evidence can still be legally discovered. At this time the evidence still has the ability to evidence, not affected by the investigator's illegal behavior. The fourth illegal "pollution" state interruption exception, that is, the suspect (defendant) voluntarily accept the investigator's illegal behavior and behavior, at this time, the illegal behavior "pollution" interruption and the evidence obtained has the ability to evidence. The adjustment of the scope of application of the fruit of the poisonous tree rule in the United States reflects its attempt to balance the discovery of the truth of the case and the protection of human rights. However, it is worthy of further consideration whether allowing derivative evidence obtained from coerced verbal evidence to be used as evidence will, to a certain extent, encourage the aforementioned coercive behavior.

### **3.2. The Necessity of the Application of the Fruit of the Poisonous Tree in China's Criminal Proceedings**

The theoretical circles have different views on the introduction of the fruit of the poisonous tree theory in China. In general, the theoretical circles in China do not support the introduction of the fruit of the poisonous tree theory mainly for the following reasons: First, from the perspective of the impact of illegal evidence collection on the credibility of the evidence, it is believed that the illegally obtained physical evidence generally has no substantial damage to the authenticity of the evidence, that is, there is no need to exclude.[11] Second, from the perspective of the realistic problems that exist in China, it is believed that te primary problem in China's current criminal proceedings is to prevent illegal evidence-taking acts that directly infringe on citizens' personal rights, such as torture to extract confessions, and that the legislation should focus on solving this outstanding problem, and it is not appropriate to expand the scope of application of the rule on the exclusion of illegal evidence [1]. Third, from the perspective of China's realities, the reasons for the existence of illegal evidence collection are many, such as the complexity and concealment of criminal offenses, the backwardness of criminal investigation technology, and the small amount of judicial workload, etc. The legislation should be adapted to the actual state of China's legal system, and if the rules on the exclusion of illegal evidence are "ahead of time," they will also be "overtaken" by the existence of If the rule of excluding illegal evidence is "ahead of time", it will be difficult to implement due to the existence of conceptual barriers, social barriers, especially institutional barriers [5]. The above reasons for objection seem to have a certain degree of plausibility, but on closer examination they do not.

### 3.2.1. A right Without Remedy is not Right

"A right without remedy is not right. This old proverb tells us that even if the law provides for the rights and liberties of citizens in a comprehensive and detailed manner, if the rights and liberties cannot be legally remedied when they are infringed, the said rights and liberties are just a piece of paper. Relief is both the protection of legal rights and the declaration of moral rights. Therefore, the realization of rights requires the guarantee of relief. Specifically in criminal proceedings, the exercise of judicial power should not only relieve the rights of victims, safeguard the interests of the state, and establish legal authority, but also ensure that the human rights of the pursued are fully protected in the process, and that the rights (power) are not violated while the rights are being relieved.

The rule of illegal evidence exclusion is a relief measure created by the court to stop the public power from obtaining evidence in the proceedings of criminal cases in a way that violates the legal rights of the person being prosecuted. As an integral part of the rule of exclusion of illegal evidence, the theory of the fruit of the poisonous tree embodies the relief of the rights recognized by the law when they are violated, and such relief is more helpful to achieve its purpose value.

In China's judicial practice, torture to obtain confessions and other illegal means of evidence is an important reason is that the confession itself has a large collateral value, that is, according to the confession can easily obtain the relevant physical evidence. According to current judicial practice, even if the illegal verbal evidence is excluded, the physical evidence based on this still has evidentiary capacity and can be used together with other evidence as the basis for conviction and sentencing of the accused, thus dissipating the effect of the exclusion of illegal evidence rule.

For example, in the book "Empirical Study of the Rules for Exclusion of Illegal Evidence", such a case was exemplified [1]: After capturing the suspect and in the absence of a confession, the investigator found a body in a pond, which was tied to a stone with a plastic rope, and the investigator used the following questioning of the suspect.

Investigator: "How did you sink the body inside the pond?"

Suspect: "I was tied with wire."

Investigator: "The wire will rust in the pond, where can be tied?"

Suspect: "I did not use wire, is tied with twine."

Investigator: "twine which works, in the pond will rot, you think again with what tied?"

Suspect: "Then I use plastic rope tied, okay?"

In this case, it is clear that the investigators used the illegal means of obtaining evidence by inducing a confession, in the process of trial, even if the verbal confession is excluded, the physical evidence obtained based on the confession can still be used as a basis for conviction, and thereafter, the investigative authorities then obtained the suspect's guilty confession through lawful interrogation, so as to obtain a legal confession of his desire, thus circumventing the constraints of the rule of exclusion of illegal evidence. In this way, the rule of exclusion of illegal evidence will be hollowed out[8].This would easily lead to wrongful convictions.

### 3.2.2. Remedies Proceed Right

The English common law maxim that "procedure prevails over right" is a well-known legal maxim. It is believed that the right is set by the procedure and exists because of the existence of the procedure, so the procedural law is more important than the substantive law. Before the law, every litigant has equal legal personality, and in criminal proceedings, the defendant and the public prosecution are no exception. Judicial trial is the absolute compliance with the existing legal provisions, the outcome of the trial that is, according to the existing law on the evidence of the legal

facts to make a determination and judgment, in this process, the procedure is the legal world of fixed, impenetrable rules.

In this process, the procedure is a fixed and insurmountable rule in the legal world. The individual citizen is insignificant in front of the powerful state judicial machine, and the procedure is superior to the right, that is, to restrain the exercise of public power by the powerful state machine, and to inhibit its role in infringing on the legal rights of citizens. The rule of excluding illegal evidence is established on this basis. A famous case of procedural precedence, or in more detail the exclusion of illegal evidence, is the case of Simpson's wife murder. An important reason for the acquittal of the defendant Simpson was the fact that the police evidence collection procedure was illegal and that there were flaws in the evidence against Simpson for the crime.

Under the modern rule of law, the requirement that public authorities must abide by the law is of great value, i.e., the law is supreme and no one, no authority, is above the law. It is true that tolerating procedural violations in individual cases can sometimes serve the purpose of punishing crime, but it also potentially recognizes the autonomy of public authorities to decide whether to comply with the law according to the needs of the situation. The rule of law certainly punishes crime, but it cannot be based on denigrating the rule of law, as U.S. Supreme Court Justice Holmes noted, "A criminal's escape from justice is a much lesser crime than a despicable and illegal act of government." [7] In addition, the establishment of the doctrine of the fruit of the poisonous tree may make it difficult to achieve justice in individual cases due to the fault of law enforcement officers, but the acquisition of any value always comes at the cost of the loss of specific benefits. The rule of law requires the stability of the law, which includes not only the stability of the substantive law, but also the stability of the applicable legal procedures. We cannot change stable procedural rules in order to pursue the realization of justice in individual cases. According to the method of weighing interests, the establishment of overall procedural justice is better than the realization of individual justice, and the realization of individual justice is based on "legal sanctioning of illegal" rather than "illegal against illegal". The value of the application of the theory of the fruit of the poisonous tree is to restrain public power and require the prosecuting authority to adhere to the legal procedures, and the resulting loss in each case is to maintain the procedural rule of law and urge the prosecuting authority not to violate the law in the future as a replacement value [2]. Finally, the basic connotation of judicial justice is to reflect the principles of fairness and justice in the process and outcome of justice. Justice must be achieved in the judicial process, and in a visible way. We cannot indulge in this illegal method because it has not yet caused substantial damage or serious wrongdoing, not to mention the fact that the wrongdoing confirmed today is not excluded by the illegal collection of physical evidence and the "consumption" of the fruit of the poisonous tree. Again, "the fundamental purpose of modern criminal proceedings can be summarized as the maintenance of the constitutional system and the social order on which it is consolidated and developed, and the specific purpose can be summarized as the punishment of crime and the protection of human rights." [10] Although the physical evidence represented by the fruit of the poisonous tree. The written evidence is non-reproducible and can objectively reflect the facts of the case, but the act of obtaining written and physical evidence by seriously violating the constitutional rights of citizens has itself broken the balance of two specific in criminal proceedings. Only by firmly excluding the fruit of the poisonous tree, procedurally sanctioning the violation of citizens' constitutional rights first, and providing procedural law relief for the pursued persons, can we stop these illegal acts from causing further impact on citizens' rights.

To sum up, the theory of the fruit of the poisonous tree has the necessity of application in the current criminal proceedings in China.

## **4. The Application of the Fruit of the Poisonous Tree Theory in China's Criminal Proceedings and the Standardization of the Proposal**

### **4.1. The Standard of Application of the Fruit of the Poisonous Tree Theory in China's Criminal Proceedings**

The "Two Evidence Provisions" focus on the exclusion of illegally obtained verbal evidence, while the exclusion of physical evidence is only rarely addressed. This has largely curtailed the application of the rule of excluding illegal evidence, but it has not negated the requirement of "forbidding" the fruit of the poisonous tree in China's criminal proceedings.

#### **4.1.1. "Obviously Violate the Legal Provisions of the Way to Take Evidence" in the "Fruit of the Poisonous tree" Connotation**

In the "two evidence provisions", the provisions on the exclusion of illegal physical evidence involves two rules, the "handling of death penalty cases," Article 9 of the evidence of physical evidence, documentary evidence of the circumstances of the defective provisions, paragraph 1 of the article: "by the investigation, inspection, search, extraction, seizure of physical evidence, documentary evidence The physical evidence and documentary evidence, not accompanied by the investigation, inspection records, extraction records, seizure list, can not prove the source of physical evidence, documentary evidence, can not be used as the basis for the case." Article 14 of the Provisions on the Exclusion of Illegal Evidence: physical evidence, documentary evidence obtained in clear violation of the provisions of the law, may affect a fair trial. It should be corrected or a reasonable explanation, otherwise, the physical evidence, documentary evidence can not be used as the basis for determining the case. It should be pointed out that Article 9 of the Provisions on Evidence in Death Penalty Cases is about illegal evidence in violation of legal procedures, which shall be excluded according to law. This article belongs to the exclusion of direct evidence, and does not belong to the scope of the fruit of the poisonous tree derived from illegal evidence discussed in this article. The provisions of Article 14 of the Provisions on the Exclusion of Illegal Evidence, on the other hand, do not.

China's newly revised "Criminal Procedure Law" Article 54 of the "exclusion of illegal evidence" Article 14 of the content of a more detailed provisions: the collection of physical evidence, documentary evidence does not comply with legal procedures, may seriously affect the administration of justice, should be corrected or make a reasonable explanation; can not be corrected or make a reasonable explanation, the evidence shall be excluded. Central political and legal organs in charge of the "two evidence provisions" when answering reporters' questions, said the illegally obtained physical evidence, documentary evidence whether to exclude, there is a big controversy at home and abroad, judicial practice is generally rarely excluded. In order to regulate forensic activities, to ensure the fairness of the case, the current stage should be physical evidence, documentary evidence of illegal evidence to make the principle provisions, is a bold breakthrough, but the wording is more cautious, tend to leave room for practice[4]. The author believes that although the provisions of the above-mentioned articles are more principled as the speaker said, it is undeniable that this is the legal basis for the application of the fruit of the poisonous tree theory in China's criminal proceedings.

The provisions of the above two articles do not give absolute exclusion of illegally obtained physical evidence, documentary evidence, but the use of the principle of weighing interests, that is, to meet three conditions to exclude them: first, the way to obtain evidence clearly violates the provisions of the law; second, the illegal way may affect a fair trial; third, the violation of legal procedures can not make corrections or reasonable explanation. Among them, "the way to obtain

evidence obviously violates the provisions of the law" is usually understood to mean that the way to obtain documentary and physical evidence is illegal, such as the use of illegal search, illegal seizure, illegal intrusion into the home and other methods. However, such understanding is only one aspect of the "evidentiary method obviously violates the provisions of the law", should also include the illegal method of obtaining physical evidence, documentary evidence in the place of information, that is, the investigator through torture and other illegal means to collect the confession of the person being prosecuted in order to obtain documentary evidence, physical evidence in the place of information, and in this way to obtain physical evidence, according to the map. Even if the procedure and means of obtaining physical evidence are in accordance with the law, this method belongs to the category of "obtaining evidence in a way that clearly violates the law", and the physical evidence thus obtained should be excluded, because the investigator's illegal methods of extorting confessions under torture have affected the justice and obviously cannot make up for the illegal act. This situation meets the three conditions stipulated in the law. The illegal means of extorting confessions through torture is the poisonous tree, and the physical evidence obtained from it is the poisonous fruit, and the exclusion of the physical evidence is the rejection of the fruit of the poisonous tree.

#### **4.1.2. Exclusion of Guilty Confessions and the Exclusion of the "Fruit of the Poisonous Tree"**

Article 106 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China stipulates that if the defendant's confession or identification is based on the extraction of highly concealed physical or documentary evidence, and the defendant's confession is corroborated with other evidence proving the occurrence of the crime, and the possibility of conspiracy, forced confession or induced confession is excluded, the defendant may be found guilty. The above-mentioned law is usually interpreted as the mutual corroboration between the incriminating evidence and the reinforcement of the confession[6]. However, the author believes that this article is also an application of the theory of the fruit of the poisonous tree.

According to the provisions of the article to determine the defendant's guilt to meet the following four conditions: first, the defendant made a guilty confession; second, according to the defendant's guilty confession to extract a strong concealment of physical evidence, documentary evidence; third, the defendant's confession can be corroborated with other evidence to prove the occurrence of the crime; fourth, the defendant's guilty confession to exclude the possibility of collusion, forced confessions, induced confessions. If the investigator obtains the guilty confession of the accused through torture and other illegal means, and extracts the highly concealed documentary and physical evidence according to the guilty confession, even if the documentary and physical evidence obtained can be corroborated with other evidence proving the occurrence of the crime, the defendant cannot be found guilty because the fourth condition mentioned above is not met in this case. In this regard, as long as the defendant's incriminating statements are obtained through illegal means such as collusion, forced confessions, induced confessions, the defendant can not be found guilty, according to the confession to obtain documentary and physical evidence here is no longer meaningful, attached to the exclusion of the defendant's incriminating statements and lost its applicable status in criminal proceedings. That is, the poisonous tree was denied at the same time, the poisonous fruit also lost the meaning of existence.

In judicial practice, as to whether the manner in which physical or documentary evidence is obtained violates the law, whether it is likely to affect a fair trial, and whether corrections and reasonable explanations are made, the judgment rests with the judge, i.e., the judge has greater discretion in determining whether the documentary or physical evidence is the fruit of the poisonous tree and whether it should be excluded. In China's current judicial practice, the independent exercise



of judicial power by judges such as higher courts, administrative organs and other restrictions, coupled with the quality of judges in the group of judges vary, so it is easy to appear in the practice of the exclusion of illegal evidence arbitrary application, contrary to the stability of the law and the establishment of judicial authority. Therefore, the rules of excluding illegal evidence in China, especially the rules of excluding illegal physical evidence involving the theory of the fruit of the poisonous tree, should be further clarified, standardized and proceduralized.

## **4.2. Suggestions for Standardizing the Rules of Application of the Fruit of the Poisonous Tree**

However, some fundamental factors behind the legal provisions cannot be influenced by the legislator, because they are closely related to the real situation and the way of thinking of the country. Therefore, when designing specific rules for the fruit of the poisonous tree, the first important factor we need to consider is the reality of the social crime situation. At present, China is in a period of social transition, crime is rampant, the security situation is serious, the public lacks a sense of security, and from the actual situation, the serious situation of social security management in China is difficult to have a breakthrough improvement in the short term, therefore, people look to the legal provisions and the ability of law enforcement agencies to handle cases, in order to seek social security and stability. In this realistic background, the application of the exclusion of the fruit of the poisonous tree should be balanced with the punishment of crime.

### **4.2.1. Exclusion of the Scope of Application of the Fruit of the Poisonous Tree**

As mentioned earlier, China is not suitable for the full exclusion of the fruit of the poisonous tree, the "Rules for the Exclusion of Illegal Evidence", the newly amended "Criminal Procedure Law" and the Supreme Court's judicial interpretation of this also took a complementary exclusion position, that is, whether the fruit of the poisonous tree should be taken into account multiple factors. On this basis, different treatment can be given according to the different degrees of illegal evidence taking contrary to the fair procedure of criminal litigation.

Based on the above criteria, illegal depositions can be divided into depositions that constitute crimes, depositions that are serious violations, and depositions that are minor violations[9]. The act of taking evidence that constitutes a crime refers to the act of taking evidence in a way that violates the constitutional rights of citizens and violates the prohibitions of the law, which can be sanctioned according to the criminal law. For example, the criminal law of China in the crime of violent evidence, the crime of torture to obtain confessions and other crimes defined by the way of conduct that constitutes a criminal act of taking evidence that the author is talking about here. If the fruit of the poisonous tree is derived from the evidence obtained through such behavior, it will be excluded, does not have admissibility. Serious violations of the forensic behavior is a serious violation of the forensic procedures and means of legal requirements, but does not constitute a crime of forensic behavior, such as the act of inducing a confession. Although this kind of evidence is not sanctioned in the criminal law, but because of the violation of legal procedures, seriously affect the justice, so the evidence obtained through such behavior and the fruit of the poisonous tree, also does not have admissibility. Minor illegal acts of evidence collection refers to the evidence collection procedure with defects, but does not involve the violation of the substantive rights of citizens' evidence collection. For example, the public security authorities did not inform the suspect of his right to seek the help of a lawyer during the first interrogation, and the physical evidence searched under such circumstances based on the suspect's confession should not be excluded. This is a certain concession made by procedural justice in weighing the procedural justice and the truth of the case, and is also a requirement to strike a balance between safeguarding the human rights of the prosecuted and punishing the crime.

## 4.2.2. Evidentiary and Procedural Requirements for Excluding the Application of the Fruit of the Poisonous Tree

The Rules for the Exclusion of Illegal Evidence provide detailed and operable rules for the exclusion of illegal verbal evidence, including provisions for the exclusion of illegal verbal evidence in the examination and approval of arrest and prosecution, as well as the procedures and allocation of the burden of proof for the exclusion of illegal verbal evidence before or during the trial. The relevant provisions of the exclusion rules. On the one hand, illegal verbal evidence and the fruit of the poisonous tree both belong to the organic part of illegal evidence, and both have homogeneity; on the other hand, the fruit of the poisonous tree is largely the derivative evidence of illegal verbal evidence, and is subordinate to the exclusion of illegal verbal evidence or not. Therefore, the exclusion of the fruit of the poisonous tree and illegal verbal evidence to apply the same procedures and rules design, not only to avoid the cumbersome legal provisions caused by re-legislation, but also conducive to the convenience and systematization of the criminal procedure.

## 5. Conclusions

The fruit of the poisonous tree theory plays an important role in protecting human rights, maintaining the fairness of criminal procedure, and preventing the occurrence of unjust and false cases. China's "two evidence regulations", the newly revised Criminal Procedure Law and the relevant provisions of the judicial interpretation provide the principle norms for the application of the fruit of the poisonous tree theory, and also create space for the application of judicial discretion. At the current stage of development of the rule of law in China, the public's distrust of justice has still not been improved, and the development of judicial discretion left to chance may not bring the judicial justice we expect, and may even lead to judicial conditions that are at odds with it. Therefore, for the theory of the fruit of the poisonous tree, which is an integral part of the rule of excluding illegal evidence, it is necessary to formulate corresponding specific operational norms while getting sufficient attention, so as to better realize the unity of criminal proceedings in punishing crimes and safeguarding human rights.

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