THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE

–AMERICAN AND CHILEAN LAW–

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Abstract
This work analyzes the possibility of considering the exception known in the American legal system as the good faith exception, as an exception to the exclusionary rule established in article 276 section 3 of the Chilean Criminal Procedural Code. For this purpose, the work first tackles the issue through the American case law, where this exception was created, and then critically analyzing the approach taken by Chilean case law and legal scholarship regarding this subject.

Key words: *Criminal procedure, exclusionary rule, illegal evidence, good faith, law of evidence.*

INTRODUCTION

Since the reform of the Chilean criminal procedure came into force more than fifteen years ago, the treatment and scope given by the dominant legal scholarship and the courts to the exclusionary rule established in Art. 276, section 3 of the Criminal Procedural Code (hereinafter, Art. 276.3 CPP), is to a large extent based on the reception of the exclusion of evidence model developed for more than a century in American case law.

That model gets its structure from a general rule: the exclusion of the evidence obtained by law enforcement officers in violation of the rights guaranteed in some of the Amendments to the United States Constitution; and as a counterpart, the acceptance of various exceptions to that rule that under certain preconditions authorize the admission into trial of that evidences, despite the vices that concur in their acquisition.

The reception in the Chilean legal system of the exceptions to the exclusionary rule acknowledged by the Supreme Court of the United States, has settle among the dominant legal scholarship and in judicial decisions. Their incorporation (acritical most of the time) has contributed to courts ignoring their singularities regarding

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their operative preconditions, or even whether they are compatible with our positive legislation.

Since the system within which these exceptions were originally conceived has a different structure from its Chilean counterpart, which distinctively belongs to the Continental legal tradition, their reception in our criminal procedure demands at least a special justification that permits to validate (or to dismiss) their application in a different legal context. The reception in Chile of the "agent's good faith" as an exception to the exclusionary rule is especially problematic. The next sections are devoted to those issues.

1. THE EXCLUSIONARY RULE AND THE FRUITS OF THE POISONOUS TREE DOCTRINE IN AMERICAN LAW, AND ITS EXCEPTIONS. GENERAL CONCEPTS

One of the most relevant American judicial developments in the field of criminal procedure is without a doubt the so-called "exclusionary rule" and its logical corollary, the well-known "fruits of the poisonous tree doctrine".

As already noted, that rule –originally acknowledged by the Supreme Court of the United States in 1914 and further polished in the following years– has not only impacted the way in which the "illegal evidence" ["*prueba ilícita*"], as it is known among us, has been addressed in American law, but it has also impinged directly upon the development of the subject in legal scholarship and case law in foreign countries, being Chile one of them.

Initially developed by the highest American tribunal from its 1914 decision in *Weeks* v. *U.S.*[1] onward, the exclusionary rule sanctions with the inadmissibility in a criminal court of those evidences compiled by law enforcement officers in violation of the rights guaranteed in the Fourth (protection against illegal detentions, searches and seizures), Fifth (privilege against self-incrimination and double jeopardy), Sixth (fair trial, specifically the right to legal counsel), or Fourteenth (due process) Amendments to the Constitution of the United States.[2]

A few years after *Weeks*, in its decision in *Silverthorne Lumber Co.* v. *U.S.*,[3] the Supreme Court stretched the consequences of the rule, comprising among the evidence to be excluded not only the evidence *directly* obtained through interferences on any of those rights, but also the evidence that *derived* from an illegal act, that is, evidence causally connected to a violation of those rights. Ruling the Court at that time that "the essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the

1 See *Weeks* v. *U.S.* (1914); *Nardone* v. *U.S.* (1939); *Mapp* v. *Ohio* (1961); *Wong Sun* v. *U.S.* (1963); *Segura* v. *U.S.* (1984); *Nix* v. *Williams* (1984).

2 See Correa (2016), pp. 161 and ff.

3 *Silverthorne Lumber Co.* v. *U.S.* (1920).

Court, but that it shall not be used at all",[4] it was for the first time acknowledged the well-known "fruits of the poisonous tree doctrine", which reception, as noted, has exceeded the frontiers of its country of origin, reaching, for some years now, the Chilean case law[5] and legal scholarship.[6]

The birth of the fruits of the poisonous tree theory was, at the same time, the beginning of the consecutive limitations that the American case law progressively imposed throughout the twentieth century over its application. Indeed, already in *Silverthorne Lumber Co.* v. *U.S.*, the highest court held that "of course this [the fruits of the poisonous tree doctrine] does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others (…)".[7] This pronouncement gave birth to the first of the exceptions to the theory of the fruits of the poisonous tree, the "independent source exception".

By virtue of this exception, the admission into trial of the challenged evidence is permitted if it is demonstrated that the origin of that evidence has an independent source, clearly differentiated from the alleged violation. Being possible in this kind of cases to trace back the acquisition of evidence to a legally unquestionable act, the challenged evidence is not *truly* poisoned.[8] It is thereby consistent to sustain that the "independent source exception" is not properly an exception to the exclusionary rule or to the "fruits doctrine", but instead the absence of the material preconditions on which the application of the latter is based, as it has been correctly asserted among us.[9]

The second big exception to the exclusionary rule is that of the "purged taint exception", also known as "attenuated connection exception". This exception was originally conceived in the 1979 decision in *Nardone* v. *U.S.*, initially circumscribed

4 *Silverthorne Lumber Co.* v. *U.S.* (1920), p. 392.

5 See *against C.C.D.* (2015); *against Villanueva* (2015); *against Carrasco* (2015); *against Nazar* (2015); *against Encina* (2014); *against Apablaza* (2014); *against Maripán* (2014); *against Castro* (2014); *against Navarrete* (2013); *against Fuentes and others* (2012); *against González and others* (2010); *against Furlong and others* (2010); *against Sanhueza* (2007).

6 Hernández Basualto (2005), pp. 76 ff.; Zapata García (2004), pp. 29 ff.; Horvitz Lennon / López Masle (2004), p. 219; Chahuán Sarras (2016), p. 263; Cerda San Martín (2010), pp. 157 ff.; Correa (2016), pp. 161 ff.

7 *Silverthorne Lumber Co.* v. *U.S.* (1920), p. 392. Also *vid. Sutton* v. *U.S.* (1959); *Burke* v. *U.S.* (1964); *Segura* v. *U.S.* (1984); *U.S.* v. *Crews* (1980); *U.S.* v. *Wade* (1967); *Costello* v. *U.S.* (1961); *Bynum* v. *U.S.* (1960); *Lawn* v. *U.S.* (1958).

8 "The exclusionary rule has no application (where) the Government learned of the evidence from an independent source". *Wong Sun* v. *U.S.* (1963), P. 487; *U.S.* v. *Houltin* (1978). In scholar literature, see Golden (1998), p. 98; Jones (1967), p. 18, fn. 7; Killian (1982), p. 155; Ossenberg (2011), p. 106; Sk-Rogall (2016), §136a, mn. 116.

9 In legal scholarship: Hernández Basualto (2005), pp. 22, 77 ff.; Correa (2016), pp. 161 ff. In case law: *against Fuentes* (2010).

and then specified decades later in *Wong Sung* v. *U.S.*[10] With this exception the United States Supreme Court accepted the admission into trial of evidence acquired in violation of fundamental rights, but whose connection to the unlawful acquisition has been attenuated enough due to a subsequent event. In such a case, it is not –normatively– possible to speak of a connection between an unlawful conduct and the acquisition of the evidence. In the Supreme Court own words: "The (fruits of the poisonous tree) rule has no application when the connection between the lawless conduct of the police and the discovery of the challenged evidence has become so attenuated as to dissipate the taint".[11]

Years later, in 1984, for the first time in *Nix* v. *Williams*, the Supreme Court acknowledged a third exception to the application of the "fruits of the poisonous tree doctrine": the so-called "inevitable discovery exception". Through this exception, the highest court accepted the admission into trial of that evidence causally derived from the violation of constitutional protected rights, but whose lawful acquisition was expectable considering the concurrence of a hypothetic causal chain of lawful conduct, though not executed.[12]

The acknowledgement by the American case law of the exclusionary rule and the exceptions to its application has permitted the harmonization of the different (and divergent) objectives that underlie the criminal procedure,[13] thereby protecting the defendant's constitutional rights and securing the social interest in the rightful inquiry of truth and the conviction of the guilty,[14] thus sheltering the proper operation of the criminal justice system.[15]

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These three exceptions represent the most extensively accepted exceptions to the exclusion of evidence even outside the borders of American law, being its application admitted in some legal systems of the civil law traditions, including countries like Chile. The reasons that justify the acceptance or dismissal of these exceptions in the Chilean legal system exceed the framework of the present article and that argument will be developed in another opportunity.

10 *Nardone* v. *U.S.* (1939); *Wong Sun* v. *U.S.* (1963). Cf. Killian (1982), p. 155.

11 *Wong Sun* v. *U.S.* (1963), p. 487. Cf. *Nardone* v. *U.S.* (1939).

12 *Nix* v. *Williams* (1984); *Brewer* v. *Williams* (1977); *Wayne* v. *U.S.* (1963). In scholar literature, *vid.* Ambos (2010), p. 134; Harris (1991), pp. 315 and 317; Ossenberg (2011), p. 107; Pitsch (2009), p. 409.

13 As the Court pointed it out in *Nardone* v. *U.S.* (1939): "Any claim for the exclusion of evidence logically relevant in criminal prosecutions is heavily handicapped. It must be justified by an overriding public policy expressed in the Constitution or the law of the land. In a problem such as that before us now, two opposing concerns must be harmonized: on the one hand, the stern enforcement of the criminal law; on the other, protection of that realm of privacy left free by Constitution and laws but capable of infringement either through zeal or design" (p. 340). Cf. Harris (1991), p. 313.

14 Cf. Pitler (1968), p. 586.

15 In Justice Wright's words: "[…] we cannot ignore the public safety in our attempt to correct police wrongdoing. [...] Doubtless, [the exclusionary rule] would be a most effective deterrent to illegal interrogations, but the cost to the public is too great." *Killough* v. *U.S.* (1962) (Wright, J., concurring opinion).

Notwithstanding the above, the American case law has developed additional exceptions to the exclusionary rule, whose acknowledgment and application in other legal systems renders particularly controversial. One of those exceptions is precisely the "good faith exception", whose content, scope and limits are examined in the following.

2. THE ORIGIN AND CONTENT OF THE "GOOD FAITH EXCEPTION" AS A LIMIT TO THE APPLICATION OF THE EXCLUSIONARY RULE WITHIN AMERICAN LAW

The Supreme Court of the United States has rejected the exclusion of evidence obtained in violation of the constitutional rights established in the Amendments, when the law enforcement officers have acted in good faith, that is, falling into error about the unlawfulness of their conduct intended to the acquisition of evidence.

The remote origin of the good faith exception could be located in Justice White's dissenting opinion in *Stone* v. *Powell*. In that 1976 opinion Justice White pointed out that the exclusionary rule "should be substantially modified so as to prevent its application in those many circumstances where the evidence at issue was seized by an officer acting in the good-faith belief that his conduct comported with existing law and having reasonable grounds for his belief".[16]

The reception of the good faith exception by the majority of the Court took place a few years after that, in *United States* v. *Leon*, when Justice White himself delivered the opinion of the Court.[17]

The facts in that case were these: in August 1981 the California State police received information incriminating two allegedly drug dealers. Upon that information the police begun a surveillance operation on the suspects' residences, recording the people that daily visited the residences. With that information, one of the agents directed an affidavit to a judge, who then issued a search warrant. Counting on that warrant, the police agents entered and searched the residences, seizing numerous incriminating evidences.

Later on, it was determined that the information upon which the search warrant was requested and issued was based on sources insufficiently corroborated by the police. That information did not satisfy the standard of proof (probable cause) required for issuing a search warrant, so this judicial order suffered from a validity defect.

Therefore, having the police officers conducted a search of the defendant's residence without a validly issued judicial warrant, their conduct violated the defendant's Fourth Amendment rights, which seeks to protect citizens from unreasonable searches and seizures by the state. According to the application of the

16 *Stone* v. *Powell* (1976) (White, J., dissenting opinion).

17 *U.S.* v. *Leon* (1984).

exclusionary rule, the evidence was open to be excluded. But the Supreme Court denied the motion to suppress that evidence, arguing that the entrance, search and seizure, despite of its illegality, was conducted by police agents acting in good faith. Then and there the good faith exception was born into American law.

On these grounds, the Supreme Court held that:

> Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of government rectitude would impede unacceptably the truth-finding functions of judge and jury. An objectionable collateral consequence of the interference with the criminal justice system's truth-finding function is that some guilty defendants may go free or receive reduce sentences as a result of favorable plea bargains. Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system.[18]

Precisely because of the referred pernicious effects that the application of the exclusionary rule could carry for the effectiveness of the criminal justice system, the Court decided to modify the exclusionary rule "to permit the introduction of evidence obtained in the reasonable good-faith belief that the search or seizure was in accord with the Fourth Amendment".[19]

Now, contrary to what one might think, the agent's good faith exception as accepted by the Supreme Court was not initially conceived to correct any defective acquisition of evidence. On the contrary, the Court was clear in *Leon* to declare that it "have not recognized any form of good-faith exception to the Fourth Amendment exclusionary rule":[20] since then, the acceptance of the good faith exception to the application of the exclusionary rule is limited to the specific situation of that law enforcement agent acting pursuant to a judicial search warrant issued despite failing to satisfy the probable cause standard –that is, the standard of proof required under American law to issue a search warrant.[21]

In relation to that particular situation, the Court pointed out that its "evaluation of the costs and benefits of suppressing reliable physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate leads to the conclusion that such evidence should be admissible in the prosecution's case in chief".[22]

18 *U.S.* v. *Leon* (1984), pp. 907 ff.

19 *U.S.* v. *Leon* (1984), p. 909.

20 *U.S.* v. *Leon* (1984), p. 913.

21 *U.S.* v. *Leon* (1984). Cf. Pitsch (2009), p. 381; Rogall (1995), pp. 124 ff.

22 *U.S.* v. *Leon* (1984), p. 913.

The good or otherwise bad faith of the law enforcement agent, continued to argue the Court, should be examined in every particular case under objective parameters – specifically the existence or absence of a presumable lawful search warrant: "When officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time".[23]

After *Leon*, the Supreme Court has stretched, though narrowly, the application of the good faith exception, opening it also to those cases in which the search warrant is only formally defective, containing typographical errors.[24]

The general acceptance under American law of this exception beyond the referred limitations is at least problematic. As postulated here,[25] the acknowledgment of this exception beyond the abovementioned margins could for example lead to a loosely or undue revision of the judicial orders required to perform some evidentiary proceedings, considering that such an error could remain without a procedural penalty if the evidence is not excluded.

3. SUBSTANTIVE JUSTIFICATION OF THE GOOD FAITH EXCEPTION UNDER AMERICAN LAW

The rationale wielded by the Supreme Court of the United States to justify the good faith exception is directly connected to the interest in deterring law enforcement officers through the exclusion of evidence, from committing new violations of constitutional rights when obtaining incriminating evidence. That purpose has been repeatedly recognized by the Court as the –nowadays unique– justification of the exclusionary rule.[26]

Therefore, when law enforcement officers seize evidence acting with good faith, ignoring the unlawfulness of their conduct, it wouldn't be necessary, despite of actual violation of constitutional rights, to deter that offending officers from committing new acts of misconduct in the future: their conduct, al least in their internal forum, was thoroughly lawful. In this regard, even before *Leon*, the Court stated:

> The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future

23 *U.S.* v. *Leon* (1984), p. 926.

24 Massachusetts v. Sheppard (1984).

25 On this respect, in case law: *Nix* v. *Williams* (1984). In scholarship: Golden (1998), p. 101; Harris (1991), p. 314.

26 *Nix* v. *Williams* (1984); *Stone* v. *Powell* (1976); *U.S.* v. *Janis* (1976); *People* v. *Cahan* (1955). Cf. in scholarship: Ossenberg (2011), p. 75; Rogall (1995), p. 125.

> counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force.[27]

The good faith of law enforcement agents is then a sign of their lacking awareness about the unlawful character of their conduct at the time of (illegally) seizing evidence, thereby diluting the need of the exclusionary rule in that case. As a corollary, the Court concluded in *Leon* that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion".[28]

Provided that the absence of need to deter is the rationale of the good faith exception, this argument covers not only the offending officers, but also the issuing judge, that is the judge that issued an authorization that otherwise would not proceed. The exclusion of evidence in this kind of cases, based on the prospective need to deter the judge that mistakenly issued an order, renders likewise unnecessary. In *Leon* the Court pointed out that it "discern no basis […] for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate".[29]

In sum, under American law, in order to the good faith exception to operate, it is required that the defect that taints the collection of evidence has its origin in a judge's action, specifically concerning the satisfaction of the standard of proof demanded for granting a search warrant. In addition, the law enforcement officer must have acted ignoring that her acquisition of the evidence was tainted by a defect in the judge's order.

A contrario sensu, the vices in which the law enforcement agent incurred when she seized the evidence cannot be purged in virtue of her good faith regardless whether she knew about her unlawful conduct: the exclusion of that evidence is necessary to deter future law enforcement misconduct.

As it is shown in the following, this previous distinction is of fundamental significance to the understanding of the problem that underlies the defective reception of the *Leon* doctrine by the Chilean Supreme Court.

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27 *Michigan* v. *Tucker* (1974), p. 447; *U.S.* v. *Peltier* (1975). Cf. *U.S.* v. *Leon* (1984); *Massachusetts* v. *Sheppard* (1984). In scholarship: Harris (1991), p. 314; Pitsch (2009), p. 381.

28 *U.S.* v. *Leon* (1984), p. 922.

29 *U.S.* v. *Leon* (1984), p. 916. Quite the contrary, the deterrent effect attributed to the exclusionary rule is actually necessary, according to the Supreme Court, when the error committed by the judge when issuing the order is so flagrant that it amounts not only to a deviation from the judge's function, but also it is an order that no law enforcement agent should pursue. In *Lo-Ji Sales, Inc.* v. *New York* (1979), a search warrant was issued without any ground, failing to specify the items to be seized.

Possibly the good faith exception is the most conspicuous example of the way in which the exclusionary rule operates in the ordinary practice of the American criminal justice system. Indeed, the application of the exclusionary rule and its exceptions shows that the judicial decision on the admission of evidence into trial is not mechanically adopted,[30] but a complex, case-to-case decision-making process, whose results finally lead to the incorporation or exclusion of evidence.

4. THE GOOD FAITH EXCEPTION IN CHILEAN COURTS DECISIONS

After the CPP came into effect, the Supreme Court of Chile has recognized in various occasions the applicability of the three great exceptions to the exclusionary rule. Thereby and without thoroughly consideration on the matter,[31] the highest tribunal has dismissed the defense's claims to void convictions based on evidence obtained in violation of the defendant's constitutional rights, when the challenged evidence is not causally connected to that violation,[32] or when a hypothetic lawful discovery of the evidence would render inevitable,[33] or when the connection between the violation and the acquisition of the evidence appears sufficiently attenuated.[34]

Likewise, as it will be shown right away, the Chilean Supreme Court has generally accepted the good faith as an exception to the exclusionary rule and also as an exception to the fruits of the poisonous tree doctrine.[35] As a result, the Supreme Court has not questioned the appreciation of the evidence by the trial court when that evidence derives from a law enforcement agent's (generic) action in good faith.

In what follows, I analyze the Supreme Court (and exceptionally the San Miguel Court of Appeals) decisions regarding the good faith exception, examining first the decisions in which the Court has acknowledged the application of that exception, and concluding then with a decision that rejected it.

Against Arévalo

In a rape and murder case, pursuant to a broad prosecutor's order to investigate, police agents went to the suspect's residence in order to bring him to

30 As the Supreme Court correctly stated in *McGuire* v. *U.S.* (1927): "[a] criminal prosecution is more than a game in which the Government may be checkmated and the game lost merely because its officers have not played according to the rule" (p. 99).

31 The reception by the courts of those exceptions to the exclusionary rule under Chilean law (regardless of its suitability), missing an authoritative text to afford it, requires further justification. The study of this justification, despite its enormous importance, exceeds the scope of the present article and will be addressed in another occasion.

32 See *against C.C.D.* (2015); *against Furlong and other* (2010); *against Sanhueza* (2007).

33 See *against C.C.D.* (2015); *against Formantel* (2014); *against Orellana* (2013). See also: *against Molina* (2008).

34 See *against Arévalo* (2013); *against López* (2011); *against Furlong and others* (2010).

35 See Correa (2016), pp. 159-176.

the police station. Once the suspect was under police custody and missing enough evidence to connect him to the crime, he was questioned by the police as if he were an eyewitness. Therefore, the interrogation went through unrecorded and the defendant-as-formally-a-witness made statements without prior notification of his rights and in absence of a defense attorney. The examination went on for several hours, until the suspect confessed to having killed the victim. Later on, he was taken to the place where he stated having buried the corpse.

Eight hours after that, the defendant agreed to make a new statement, but this time before the public prosecutor and previously warned of his rights. In this opportunity, again, the defendant admitted to be the author of the crime for which he was finally convicted, describing additional details about the execution of the crime.

In the trial court decision, although the tribunal observed that a violation of constitutional rights actually happened regarding the first police interrogation, the judges decided to recognize probative efficacy to the second statements considering the so-called attenuated connection, that –in the court own words– "purged the nullity" of that evidence. Since the defendant made his second statements once informed of this rights and before the public prosecutor, the vice actually produced by the police officers in the first interrogation was effectively purged.

The defense contested that decision, referring it to the Supreme Court in order to void the trial court judgment, basing its petition upon the circumstances specified in Arts. 373(a), 374(e), 342(c) and 297 CPP. Only the circumstance established in Art. 373(a) is relevant to the present purposes. The defense argued that the trial court base its decision on the testimony of the law enforcement agents that were present at the time of the first defendant's statements, as well as on all the evidence derived from that statements. In doing so, the trial court infringed the constitutional right of due process, violation that resulted in a violation of the defendant's right against self-incrimination.

The Supreme Court rejected the defense's claim on this ground, endorsing what the trial court decided in order to admit that, even though the police agents' conduct –the first police interrogation and the subsequent discovery of the victim's body, without any specific authorization of the public prosecutor– was indeed a violation of the defendant's constitutional rights, the conclusions that the defense drew from that were "disproportionate" since they "disregard the origin of the inquiry". The highest tribunal stressed that the police actions were carried out in the context of the investigation of a missing person case and hence they intended to discover the whereabouts of that missing person. In those circumstances, when the first interrogation took place, the defendant "could be the suspect of no crime". Accordingly, asserts the Court, the police conduct was covered by one of the exceptions to the exclusionary rule, that is, the good faith exception.

Regarding the application of this exception, the Court asserted that given that the defendant was taken to the police station as a witness, the acting police agents conducted themselves in good faith when they obtained the incriminatory

statements. According to the Court, since the defendant decided to talk about what had happened, the confession took the police agents by surprise. Until that moment, the Court insists, the agents were acting with good faith.

As an additional reason to reject the defense claim on this ground, the Court followed the trial court in applying the attenuated connection doctrine, thereby admitting the evidence questioned by the defense. This exception to the exclusionary rule is present inasmuch as the defendant ratified his first incriminatory statements when he spoke again, this time after reading him his rights and after interviewing with his defense counsel. In this sense, the Court pointed out that when the defendant made statements for the second time after being informed about his rights and specifically about his right to be assisted by an attorney, he freely chose not to ask for a lawyer at that moment.

Against Catalán

A few weeks after the Supreme Court decision just reviewed, once again the highest tribunal once applied the good faith exception as a conclusive criterion to exceptionally validate evidence acquired in violation of constitutional rights.

The defense challenged a conviction for the illegal trade of small amounts of drugs, an offense sanctioned in Arts. 1 and 4 Ley No. 20.000, referring the case to the Supreme Court in order to void the trial court judgment, basing its petition upon the circumstance specified in Art. 373(a) CPP. The defense alleged the violation of the defendant's rights to due process, privacy and the inviolability of his home, all of them guaranteed in Art. 19.3, 4 and 5 of the Chilean Constitution, as well as in Art. 11 of the American Convention on Human Rights, Art. 17(g) of the International Covenant on Civil and Political Rights, and Arts. 205 and 206 CPP.

Acting in response to an anonymous complaint reporting that the defendant was a drug dealer, police officers arrested Catalán. When the arresting officers searched the defendant in the outskirts of his residence, they discovered that he was carrying a bag containing a white substance that turned out to be cocaine. A few minutes after that, police agents came back to the defendant's residence, searched the place and seized various packages that contained small amounts of that drug. According to the trial court, the police agents acted in the *understanding* that they were before an *in flagrante* offense and therefore, they were legally authorized to enter the residence.

The defense contested the admission into trial and the later incriminating use of the evidence deriving from the police entrance into the defendant's house, which was a warrantless police intrusion since no *in flagrante* hypothesis objectively occurred.

The Court confirmed the trial court reasoning, basing its decision on the evidence derived from the unauthorized entrance, to the extent that there were multiple "evident signs" of the contemporary commission of a crime inside the defendant's residence. According to the Court, even though the interpretation of those signs "was not highly conclusive as it would be desirable in the regular operation of police officers", they would be a sample of "an action in good faith of

the agents", understanding that good faith was given by "the self-evidence of the in flagrante hypothesis that authorizes the entrance into the defendant's house".

Thus, the Court finally rejected the defense petition, disregarding the alleged constitutional rights violation and accepting the admission into trial of the challenged evidence and its probative use for deciding the case.

Against Sanhueza

Likewise, in another decision, although after a very concise reasoning, the Supreme Court came to the conclusion that the exception was applicable too.

At the beginning of an investigation for a drug offense, the police stopped a suspect and asked him to identify himself; given his refusal, he was handcuffed and brought into police custody. When he arrived to the police station and in the presence of a police officer, he dropped a bag containing forty-four grams of marijuana. He was arrested, but a court declared that arrest to be illegal.

The defense moved to suppress that evidence of the crime, but the motion was declined, and the defendant was found guilty. The conviction was based in that same evidence (although the defense asked the trial court to not to consider it), so the defense sought to void that judgment. According to the defense, the trial court violated the defendant's constitutional rights because it weighed unconstitutionally obtained evidence.

The Court held, first, that there was no causal chain between the (unlawful) police requirement directed to the defendant to identify himself, and the subsequent arrest motivated by the flagrant offense: the defendant, willingly, got rid of the drug he was carrying by dropping it before a police officer. The Court briefly asserted that "it seems that there was a good faith action on behalf of the arresting officers", without giving any other specification about the context in which that kind of action took place.

Against Molina

At the preliminary hearings stage, the prosecution appealed the judicial decision that suppressed evidence acquired in violation of constitutional rights. The Court of Appeals of San Miguel confirmed that decision, asserting that the evidence was not admissible because of its unconstitutional origin.

In relation to the evidence derived from that other evidence unconstitutionally acquired, the Court concluded that it was equally inadmissible since it was a nothing but a consequence of the latter. Following the "theory of the fruits of the poisonous tree", the Court argued that "insofar the primal evidence was illegally acquired, everything that is a consequence of that is also illegal". The Court ends its reasoning pointing out that the application of such a rule is however unsuitable when the law enforcement officers "acted with good faith, or when the matter had been brought before a court, or when the discovery of the evidence was inevitable", nothing of which happened in the present case.

Against Pino and other

So far, only in one case did the Supreme Court explicitly reject the application of the good faith exception to the exclusionary rule.

In an opinion delivered on April 12th 2010, the Supreme Court granted a defense petition to void a conviction on the charge of larceny. The request was based on the circumstance specified in Art. 373(a) CPP, regarding the violation of the defendant's right to due process guaranteed in Art. 19.3 of the Constitution. The denounced infringement consisted in obtaining incriminatory evidence from a police interrogation carried without meeting the requirements specified in Art. 91 CPP.

The Court reasoned that the good faith of a law enforcement officer shall not remedy the agent's ignorance about the unlawful character of a police action, nor could legitimate actions carried out under the wrong belief of being covered by a broad order to conduct an inquiry. Thus, the Supreme Court disavowed the purgation of unconstitutionally obtained evidence in virtue of the police officer's ignorance.

5. THE GOOD FAITH EXCEPTION IN THE CHILEAN LEGAL SCHOLARSHIP

Contrary to the position made by the Chilean Supreme Court, that is predominantly to acknowledge the good faith exception, the scarce scholar opinions on the matter mostly have rejected the applicability of the exception under Chilean law.

In his well-known handbook, López explicitly rejects the application of the good faith exception under Chilean law.[36] He points out that to accept the good faith doctrine as a limitation on the exclusionary rule's scope is not plausible, given the understanding –advanced by the author– about the aim of the exception as to discharge a multiple function, beyond the sole effect of deterring police misconduct. To the extent that López recognizes as one of the exclusionary rule purposes to protect the "judicial integrity",[37] the author logically infers that the law enforcement agent's good faith cannot be conceived under Chilean law as an effective limitation to the exclusionary rule established in Art. 276 CPP.

In a similar vein, Hernández also resorts to the protection purpose of the exclusionary rule to sustain his rejection of the good faith exception under Chilean law. The author argues that this exception has no place in Chilean law considering that the exclusionary rule seeks to secure the protection of some constitutional

36 Horvitz Lennon / López Masle (2004), p. 225.

37 Horvitz Lennon / López Masle (2004), pp. 183 y ss. In the same sense, see Nuñez Ojeda / Correa Zacarías (2017), p. 219.

rights.[38] As a corollary, Hernández asserts that accepting the exception would lead to the validation of evidence deriving from unconstitutional judicial actions.[39]

On the other hand, Díaz has briefly stated that the acceptance of the good faith exception imports conditioning the unlawfulness of the infringement of constitutional rights to the "agent's subjective beliefs", reason enough for him to reject the exception.[40]

The opposite position has been subscribed exclusively by Cerda,[41] who –in principle– accepts in a somewhat fuzzy way the application of the exception under Chilean law, although subjecting it to certain preconditions. According to this author, "it is a dangerous exception that could admit such a big number of situations that they could become the general rule". Nonetheless, he specifies that if this exception is accepted, "its use must be careful and restricted to those situations in which the exclusion of the illicit evidence seems disproportionate". He concretely conditions the application of the good faith exception to a previous satisfaction of the proportionality principle, making it dependent on the seriousness of the violation of constitutional rights, according to an examination of the "nature of the infringement and its intensity".[42]

6. THE SUBSTANTIVE CONTENT OF THE GOOD FAITH EXCEPTION UNDER CHILEAN LAW

An appropriate determination of the content and scope of the good faith exception entails the contraposition between an act of acquisition of evidence in contravention of the rules (mainly those established in the CPP) that govern the obtaining of the required evidence, and the agent's knowledge or awareness about the unlawful character of her action aimed at collecting that evidence.

In this sense an "action in good faith" –so far a concept of indeterminate content– could have different expressions according to the origin of the infringement of the rules of evidence collection.

As already noted, under American law the scope of the good faith exception is circumscribed. It is restricted to purging only certain mistakes made by judges when they issue search warrants, mistakes that subsequently impact on the legality of the conduct of law enforcement officers pursuant to those warrants. The police agent, it must be remembered, would act ignoring the unlawfulness of her action. Then, the origin of the vice that taints the evidence discovery is not in the action of the law enforcement officers, but prior to that: in a vicious judicial authorization.

38 Hernández Basualto (2005), p. 74.

39 Hernández Basualto (2005), p. 74.

40 Díaz García (2003), p. 154.

41 Cerda San Martín (2010), p. 165.

42 Cerda San Martín (2010), p. 165.

Conversely, as it is clear from the cases discussed above in which the good faith exception has been accepted by Chilean courts, the Chilean Supreme Court has recognized a much broader scope to the exception.

Indeed, following the main criteria advanced by the Supreme Court in the analyzed decisions, a police agent is covered by the good faith exception whenever she ignores that the way in which the collection of evidence is carried out infringes the specific preconditions required by law. For instance, in *against Arévalo*, the police officers erred about the status of defendant of the so pretended witness, thus breaching Arts. 7 and 93 ff. CPP. In *against Catalán*, the police entered the defendant's residence without a warrant, acting according to the wrong belief of being before a flagrant offense, thereby believing to be authorized by law to pursue a course of action that breached Arts. 129 ff. and 205 ff. CPP.

If the scope of the exception is stretched as to comprise these cases, an unavoidable question emerges: ¿Is it possible to speak of good faith when the origin of the infringement of the rules of evidence collection is attributable precisely to law enforcement agents, but not to a judge?

Under American law the answer to that question is negative. As already noted, according to American case law, the application of the good faith exception is restricted to those cases in which the error does not have its origin in the conduct of the offending law enforcement officer, but in a judicial decision and specifically in a judicial search warrant, issued without meeting the legal requirements. Since in that case the offending law enforcement officer has not contributed to produce the error, but rather completely ignores it, her action –in opinion of the Supreme Court– does not deserve to be sanctioned with the exclusion of the evidence. In such a case the public interest in the effective discovery of the truth overcomes the (questionable) need to correct the future conduct of law enforcement agents, given that those agents unknowingly tolerated an unlawful action with a completely alien origin.

Due to the above, stretching the good faith exception over those cases in which the origin of the vice is directly found in police misconduct (and not in a judge's), as the Chilean Supreme Court has repeatedly accepted, means leaving without any procedural sanctions some violations of constitutional right, validating them in a way that even under American law is not accepted.

7. THE GOOD FAITH DOCTRINE AND ITS CONNECTION TO THE PURPOSE OF THE EXCLUSIONARY RULE

To this point the perceptive reader would have elucidated the close relation that exists between the acknowledgement (or rejection) of the good faith exception and the purpose ascribed to the exclusionary rule, either in American or in Chilean law. Indeed, the reasons given in favor or against the applicability of the exception refer to its compatibility or incompatibility with a fixed rationale of the exclusionary rule, from which the acceptance or rejection of the exception is derived.

In this sense, if the exclusionary rule established in Art. 276.3 CPP is conceived to mainly perform a preventive function, oriented to deter law enforcement agents

from committing new infractions when obtaining evidence,[43] as it is the case under American law, it is logical when deciding about the exclusion of evidence to assess the conduct of the subject addressee by that procedural sanction as well as her knowledge about the unlawful character of her action.

According to this rationale, the offending police officer that *generates* through her conduct the violation of a constitutional right, shall be –deservedly– sanctioned with a penalty that is in principle (and independently of the actual practical impact that follows from that)[44] intended to deter her from committing new infractions. Such procedural penalty should be regularly imposed in case of both willfully and negligently constitutional rights violations produced by police conduct.

Conversely, the evidence acquired in an objective violation of a constitutional right, but which origin is traced back to an action prior to the acquisition of the evidence by the police officer (*i.e.*, to the issuing judge), should reasonably be assessed under another light. Of course, if the police officer knows about the vice that affects the judicial authorization, her conduct cannot be justified: her action is not covered under the good faith exception. Yet when the police officer ignores the defect, she acts ignoring the unlawfulness of her action, that is, with good faith. Due to the minor disvalue involved in her action (considering the origin of the vice), the evidence thus acquired should not be excluded. The Supreme Court of the United States has consistently limited the application of the good faith exception to these terms.

Despite these remarks, assigning that same function to the exclusionary rule established in Art. 276 CPP is mistaken. First, the deterrence rationale cannot be reconciled with the structure of the Chilean criminal procedure. Art. 77 CPP, along with Art. 3 LOCMP, subject the public prosecution to a principle of neutrality. Unlike its American counterpart, the Chilean criminal procedure is not an adversarial procedure, reigned by the parties. Instead, the prosecution has a legal obligation to collect, with equal zeal, both incriminatory as well as exculpatory evidence. In order to do that, the prosecution directs the activity of law enforcement officers, given that the police –according to Art. 79.1 CPP– performs an auxiliary role in criminal investigations.

In the same way, as it has been asserted by some German scholars,[45] the exclusion of criminal evidence is not a means suitable to achieve the desired deterrent effect. This purpose would be more efficiently fulfilled through other mechanisms

43 In Chilean law this is the position sustained by Donoso Boassi (2008), p. 36, and partly Horvitz Lennon / López Masle (2004), pp. 186 ff., who ascribe a double function to the exclusionary rule: the referred preventive effect along with the protection of "legal integrity".

44 The researches conducted by Oaks (1970), pp. 672 and 755, show that there are no sound empirical foundations to sustain that the American exclusionary rule has any deterrent impact on police conduct. On that basis, Posner (1982), pp. 635 ff., following a Law and Economics approach, has proposed to replace the "inefficient" exclusionary rule by a rule of compensation of the damages suffered by the person whose constitutional rights have been violated in unlawfully obtaining evidence.

45 Cf. Jäger (2003), p. 70; Störmer (1992), p. 199; Löffelmann (2008), p. 71.

entailing the imposition of direct sanctions on the law enforcement officer, typically using either criminal sanctions or non-criminal regulatory sanctions, or both.[4647] And even when the exclusion of evidence actually produces such effect, it is just a side effect.[48]

The direct object of protection of the exclusionary rule established in Art. 276.3 CPP, are the constitutional rights transgressed by police officers when collecting evidence of crime. Thus, according to the proper words of that legal rule, the consistent position is to acknowledge as its purpose the protection of the defendant's rights from unlawful attacks by law enforcement agencies performing inquiring functions.[49]

In accordance to that rationale, the answer to the central question posed by this article seems to be a different one. Justifying the application of the good faith exception to the exclusionary rule under Chilean law is –in any of its hypothesis– unwise.

Indeed, being the protection of constitutional rights, the direct purpose of the exclusionary rule as it is established under Chilean law, the enforcement of this exclusionary rule cannot be relativized in function of simple police agent's beliefs in acting covered by law. Accordingly, regardless of law enforcement officers' good or bad faith, when the acquisition of evidence is a direct consequence of a constitutional right violation, the procedural penalty established in Art. 276 CPP is mandatory. This is so, again, regardless of the origin of the infraction. If the good faith exception were accepted, the respect of a constitutional right would depend on police officers' internal perceptions and not on objective circumstances, thus leaving aside the words of Art. 276.3 CPP. That conception would question the rule itself, and consequently the protection afforded by the lawgiver to the rights established in the Constitution and Human Rights international conventions.

46 In exactly this way the dominant German scholarship: Amelung (1990), p. 18; Jäger (2003), p. 70; Kelnhofer (1994), p. 60; Ossenberg (2011), p. 30; Pelz (1993), pp. 128 ff.; Ranft (1992), p. 725; Ransiek (2015), p. 950; Rogall (1999), p. 131; Rogall (1995), p. 149; Rogall (1979), p. 15; Störmer (1992), p. 199.

47 In exactly this way the dominant German scholarship: Amelung (1990), p. 18; Jäger (2003), p. 70; Kelnhofer (1994), p. 60; Ossenberg (2011), p. 30; Pelz (1993), pp. 128 ff.; Ranft (1992), p. 725; Ransiek (2015), p. 950;
Rogall (1999), p. 131; Rogall (1995), p. 149; Rogall (1979), p. 15; Störmer (1992), p. 199.

48 Cf. Amelung (1990), p. 20; Beulke (2012), mn 454; Bockemühl (1996), p. 103; Störmer (1992), p. 199; Dalakouras (1988), p. 115; Dencker (1977), p. 55; Gropp (1989), p. 219; Hengstenberg (2007), p. 57; Jahn (2008), C 58; Kelnhofer (1994), p. 254; Muthorst (2009), p. 56; Pelz (1993), p. 131; Rogall (1979), p. 16; Schröder (1992), p. 67.

49 Correa Robles (forthcoming); Díaz García (2003), pp. 38 ff.; Zapata García (2004), pp. 23 ff.; Echeverría Donoso (2010), p. 27.

8. CONCLUSIONS

The deterrence rationale ascribed under American law to the exclusionary rule is compatible with the admission into trial of the evidence obtained by police officers acting under the false belief of behaving in accordance to law, albeit not contributing to produce the vice.

In a criminal justice system like the Chilean, that possesses a legal rule that forbids the admission into trial of evidence acquired in violation of constitutional rights, that rationale cannot be transplanted. The good or bad faith of the law enforcement agent fails to eliminate –neither causally, nor normatively– the injury actually produced on a constitutional right.

Unlike the case of the other three big exceptions to the exclusionary rule developed by the American Supreme Court and incorporated by Chilean courts, in the case of the good faith exception there is no causal decoupling, neither a hypothetical lawful acquisition of evidence, nor an action subsequent to the infraction, that could exceptionally validate an act of evidence collection connected to the violation of a constitutional right. On the contrary, in the cases in which the Supreme Court has resorted to the good faith exception, it is clear that a constitutional rights violation has actually occurred and notwithstanding, that conduct is purged.

Therefore, whether to accept the exception in the restricted cases recognized by American case law, or to stretch its scope in an extensive and undifferentiated way as it is conceived by the Chilean Supreme Court –comprising cases in which the infractions to the rules of evidence collection have their origin in the offending agents conduct itself–, the reasoning of the highest tribunal needs to find a justification for bringing together the acquisition of evidence through the violation of constitutional rights, with the existence of a exclusionary rule. That justification is completely absent in the reasoning of the Chilean Supreme Court.

The strength of the exclusionary rule and of the protection that it affords to constitutional rights inside the criminal procedure, cannot be relativized by subjective considerations, like for instance the law enforcement agent's knowledge about the unlawfulness of an act. The legitimacy of the criminal justice system and the decision to impose a punishment depend on that not happening.

The position hold in this article –to exclude evidence regardless the knowledge of the acting police agent about the unlawfulness of her action– shall produce a symbolic effect of reaffirmation of the questioned constitutional rights. The subsequently rejection of the good faith exception to the exclusionary rule implicates the understanding that the respect of constitutional rights is not a mere reminder that should guide the activity of law enforcement, but an actual legal duty.

BIBLIOGRAPHY CITED

Ambos, Kai (2010). *Beweisverwertungsverbote: Grundlagen und Kasuistik - internationale Bezüge - ausgewählte Probleme* (Duncker & Humblot).

Amelung, Knut (1990). *Informationsbeherrschungsrechte im Strafprozess: dogmatische Grundlagen individualrechtlicher Beweisverbote* (Duncker & Humblot).

Beulke, Werner (2012). *Strafprozessrecht*, 12th ed. (Müller).

Bockemühl, Jan (1996). *Private Ermittlungen im Strafprozess: ein Beitrag zu der Lehre von den Beweisverboten* (Nomos).

Cerda San Martín, Rodrigo (2010). "La prueba ilícita y la regla de exclusión", *Revista de la justicia penal*, pp. 99 ff.

Chahuán Sarras, Sabas (2016). *Manual del nuevo procedimiento penal* (4th ed., Legal Publishing Chile).

Correa Robles, Carlos (2016). "Comentario a Sentencia Corte Suprema Ingreso Nr. 14781-15, Efectos reflejos de la prueba obtenida mediante infracción de garantías", *Revista de Ciencias Penales*, Sexta Época, Vol. XLIII, N° 1, pp. 161 and ff.

Correa Robles, Carlos (forthcoming). "Más allá de la regla de exclusión: prohibiciones probatorias en el Derecho chileno - con especial referencia al Derecho alemán –", *Revista Política Criminal* (forthcoming).

Dalakouras, Theoharis (1988). *Beweisverbote bezüglich der Achtung der Intimsphäre: unter besonderer Berücksichtigung der Grundrechtsproblematik sowie des griechischen Rechts* (Duncker & Humblot).

Dencker, Friedrich (1977). *Verwertungsverbote im Strafprozeß: ein Beitrag zur Lehre von den Beweisverboten* (Heymann).

Díaz García, Iván (2003). "Derechos Fundamentales y prueba ilícita en el nuevo proceso penal chileno", in: Correa (ed.), *La prueba en el nuevo proceso penal* (LexisNexis), pp. 129 and ff.

Donoso Boassi, Samuel (2008). "Prueba ilícita, oportunidad para debatir y resolver sobre la regla de exclusión", *Revista Derecho Mayor*, pp. 35 and ff.

Echeverría Donoso, Isabel (2010). *Los derechos fundamentales y la prueba ilícita: con especial referencia a la prueba ilícita aportada por el querellante particular y por la defensa*, (Eds. Jurídicas de Santiago).

Golden, Troy E. (1998). "The Inevitable Discovery Doctrine Today: The Demands of the Fourth Amendment, Nix, and Murray, and the Disagreement Among the Federal Circuits", *B.Y.U. Journal of public law*, pp. 97 and ff.

Gropp, Walter (1986). "Zur Verwertbarkeit eigenmächtig aufgezeichneter (Telefon-) Gespräche - Der Fall Schenk und die Lehre von den Beweisverboten", *StV*, pp. 216 and ff.

Harris, Kenneth (1991). "Verwertungsverbot für mittelbar erlangte Beweismittel: Die Fernwirkungsdoktrin in der Rechtsprechung im deutschen und amerikanischen Recht", *StV* pp. 313 and ff.

Hengstenberg, Achim (2007). *Die Frühwirkung der Verwertungsverbote: eine Untersuchung der Bedeutung der Beweisverwertungsverbote für die strafprozessualen Verdachtsbeurteilungen* (Kovač).

Hernández Basualto, Héctor (2005). *Exclusión de la prueba ilícita en el nuevo proceso penal* (Universidad Alberto Hurtado).

Horvitz Lennon, María Inés and López Masle, Julián (2004). *Derecho procesal penal chileno*, Tomo II (Ed. Jurídica de Chile).

Jäger, Christian (2003). *Beweisverwertung und Beweisverwertungsverbote im Strafprozess* (Beck).

Jahn, Matthias (2008). "Beweiserhebungs- und Beweisverwertungsverbote im Spannungsfeld zwischen den Garantien des Rechtsstaates und der effektiven Bekämpfung von Kriminalität und Terrorismus. Gutachten C für den 67. Deutschen Juristentag 2008", en *Ständigen Deputation des deutschen (Ed.), Verhandlungen des Siebenundsechzigsten Deutschen Juristentages Erfurt 2008, Band I Gutachten, Teil C*, 2008, pp. C 1 and ff.

Jones, Luther E. Jr. (1967). "Fruit of the poisonous tree", *S Tex. L. J.*, pp. 17 and ff.

Kelnhofer, Evelyn (1994) *Hypothetische Ermittlungsverläufe im System der Beweisverbote* (Duncker & Humblot).

Killian, Bobbi J. (1982). "United States v. Crews: Fruit of the Poisonous Tree - A new wrinkle?", *Idaho L.Rev.*, pp. 151 and ff.

Löffelmann, Markus (2008). *Die normativen Grenzen der Wahrheitserforschung im Strafverfahren: Ideen zu einer Kritik der Funktionsfähigkeit der Strafrechtspflege* (De Gruyter Recht).

Muthorst, Olaf (2009). *Das Beweisverbot: Grundlegung und Konkretisierung rechtlicher Grenzen der Beweiserhebung und der Beweisverwertung im Zivil-, Straf- und Verwaltungsverfahren* (Mohr Siebeck).

Nuñez Ojeda, Raúl and Correa Zacarías, Claudio (2017). "La prueba ilícita en las diligencias limitativas de derechos fundamentales en el proceso penal chileno", *Ius et Praxis*, pp. 195 and ff.

Oaks, Dallin H. "Studying the Exclusionary Rule in Search and Seizure", in U. Chi. L. Rev. 1970, 665 and ff.

Ossenberg, Sarah (2011). *Die Fernwirkung im deutsch-U.S.-amerikanischen Vergleich: unter besonderer Berücksichtigung der Funktionen der Beweisverwertungsverbote* (Kovač).

Pelz, Christian (1993). *Beweisverwertungsverbote und hypothetische Ermittlungsverläufe* (VVF).

Pitler, Robert M. (1968). "The Fruit of the poisonous Tree" Revisited and Shepardized." Cal. L. Rev. 1968, 579 and ff.

Pitsch, Christoph (2009). *Strafprozessuale Beweisverbote: eine systematische, praxisnahe und rechtsvergleichende Untersuchung unter besonderer Berücksichtigung des Steuerstrafverfahrens, der Zufallsfunde und der Fernwirkungsproblematik* (Kovač).

Posner, Richard A. (1982). "Excessive Sanctions for Governmental Misconduct in Criminal Cases", en Wash.L.Rev. 1982, pp. 635 and ff..

Ranft, Otfried (1992). "Bemerkungen zu den Beweisverboten im Strafprozeß", en Seebode (Ed.), *Festschrift für Günter Spendel zum 70. Geburtstag am 11. Juli 1992*, (De Gruyter), pp. 719 y ff.

Ransiek, Andreas (2015). "Rechtswidrige Ermittlungen und die Fernwirkung von Beweisverwertungsverboten", in Fahl/Müller/Satzger/Swoboda (eds.), *Festschrift für Werner Beulke zum 70. Geburtstag* (Müller), pp. 949 and ff.

Rogall, Klaus (1999). "Grundsatzfragen der Beweisverbote", in Höpfel, Frank and Höpfel, Huber (ed.), *Beweisverbote in Ländern der EU und vergleichbaren Rechtsordnungen, Exclusion of Evidence Within the EU and Beyond, Europäisches Kolloquium Wien, 18. - 20. September 1997* (Iuscrim), pp. 119 and ff.

Rogall, Klaus (1995). "Beweisverbote im System des deutschen und des amerikanischen Strafverfahrensrechts", in: Wolter and Feigen (eds.), *Zur Theorie und Systematik des Strafprozeßrechts* (Hermann Luchterhand Verlag), pp. 113 and ff.

Rogall, Klaus (1979). "Gegenwärtiger Stand und Entwicklungstendenzen der Lehre von den strafprozessualen Beweisverboten", *ZStW 91*, 1 and ff.

Schröder, Svenja (1992). *Beweisverwertungsverbote und die Hypothese rechtmäßiger Beweiserlangung im Strafprozess* (Duncker & Humblot).

Störmer, Rainer: (1992) *Dogmatische Grundlagen der Verwertungsverbote: eine Untersuchung über die Strukturen strafprozessualer Verwertungsverbote unter dem Einfluss der Verfassung und der Grundsätze des öffentlichen Rechts* (Elwert).

Varios Autores (2016). *SK-StPO: Systematischer Kommentar zur Strafprozessordnung. Mit GVG und EMRK*, Edited by: Wolter. Band II: §§94 – 136a StPO, (5th ed., Heymanns).

Zapata García, María Francisca (2004*). La prueba ilícita*. (LexisNexis).

CASES CITED

Chile:

Against C.C.D. Corte Suprema (2015), 3/11/2015, Rol Nr. 14.781-15 (Simple homicide)

Against Villanueva Orellana. Corte Suprema (2015), 24/09/2015, Rol Nr. 10.772-15 (Drug dealing)

Against Carrasco Mosca. Corte Suprema (2015), 23/07/2015, Rol Nr. 6996-15 (Drug dealing)

Against Nazar Délano. Corte Suprema (2015), 23/03/2015, Rol Nr. 1946-15 (Drug dealing)

Against Encina Zúñiga. Corte Suprema (2015), 08/01/2015, Rol Nr. 29.375-14 (Illegal receipt of goods)

Against Formantel Concha. Corte Suprema (2014), 11/12/2014, Rol Nr. 3828-14 (Drug dealing)

Against Apablaza Rodriguez. Corte Suprema (2014), 22/10/2014, Rol Nr. 23.683-14 (Robbery)

Against Maripán Gutierrez. Corte Suprema (2014), 22/09/2014, Rol Nr. 21.413-14 (Drug dealing in small quantities)

Against Castro Vinet. Corte Suprema (2014), 23/07/2014, Rol Nr. 11.835-14 (Robbery with violence)

Against Arévalo Vidal. Corte Suprema (2013), 31/12/2013, Rol Nr. 11.482-13 (Homicide with rape)

Against Orellana Gonzalez. Corte Suprema (2013), 30/12/2013, Rol Nr. 11.767-13 (Drug dealing)

Against Navarrete Muñoz. Corte Suprema (2012), 06/06/2012, Rol Nr. 2958-12 (Drug dealing in small quantities)

Against Fuentes Arancibia y otros. Corte Suprema (2012), 04/04/2012, Rol Nr. 1258-12 (Drug dealing)

Against López Pérez. Corte Suprema (2011), 02/05/2011, Rol Nr. 2095-11 (Homicide)

Against Gonzalez Leiva y otros. Corte Suprema (2010), 19/10/2010, Rol Nr. 6305-10 (Robbery with violence)

Against Fuentes Santis. Corte Suprema (2010), 24/06/2010, Rol Nr. 2333-10 (Drunk driving)

Against Furlong Escudero y otros. Corte Suprema (2010), 25/05/2010, Rol Nr. 1741-10 (Drug dealing)

Against Sanhueza Sanhueza. Corte Suprema (2007), 11/12/2007, Rol Nr. 5435-07 (Drug dealing in small quantities)

Against Molina Ferreira. Corte de Apelaciones de San Miguel (2008), 18/11/2008, Rol Nr. 1428-08 (Penal) (Sexual abuse).

United States:

Supreme Court:

United States v. Leon, 468 U.S. 897 (1984)

Massachusetts v. Sheppard, 468 U.S. 981 (1984)

Nix v. Williams, 467 U.S. 431 (1984)

Segura v. United States, 468 U.S. 796 (1984)

United States v. Crews, 445 U.S. 463 (1980)

Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979)

Brewer v. Williams, 430 U.S. 387 (1977)

Stone v. Powell, 428 U.S. 465 (1976)

United States v. Janis, 428 U.S. 433 (1976)

U.S. v. Peltier, 422 U.S. 531 (1975)

Michigan v. Tucker, 417 U.S. 433 (1974)

United States v. Wade, 388 U.S. 218 (1967)

Wong Sun v. United States, 371 U. S. 471 (1963)

Costello v. United States, 365 U.S. 265 (1961)

Mapp v. Ohio, 367 U.S. 643 (1961)

Lawn v. United States, 355 U.S. 339 (1958)

Nardone v. United States, 308 U.S. 338 (1939)

McGuire v. United States, 273 U.S. 95 (1927).

Silverthorne Lumber Co., Inc. v. United States, 251 U.S. 385 (1920)

Weeks v. United States, 232 U.S. 383 (1914)

Other courts:

People v. Cahan, 44 Cal. 2d 434, 282 P.2d 905 (1955)

Wayne v. U.S., 318 F. 2d 205 (D.C. Cr. 1963)

Sutton v. United States, 267 F. 2d 271 (4th Cir. 1959)

Burke v. United States, 328 F. 2d 399 (1st Cir. 1964)
Bynum v. United States, 274 F. 2d 767 (D.C. Cir. 1960)
Killough v. United States, 315 F. 2d 241, 249 (D.C. Cir. 1962)
United States v. Houltin, 566 F.2d 1027 (5th Cir.1978)