

UNLAWFULLY OBTAINED EVIDENCE IN THE PROCESS OF DETECTING TAX OFFENCES

NEZÁKONNE ZÍSKANÉ DŮKAZY PRI ODHAĽOVANÍ DAŇOVÝCH TRESTNÝCH ČINOV

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ABSTRACT

The detection of tax crimes, particularly those related to value-added tax fraud, represents a complex process involving the interaction between tax authorities, the Financial Administration, and criminal justice bodies. In practice, various forms of operational and investigative activities, analytical tools, and information originating from tax proceedings are often used to enhance the effectiveness of investigations. However, these procedures carry an increased risk of violating the principle of the legality of evidence and of generating so-called unlawfully obtained evidence. This article focuses on situations where information obtained during tax audits or through independent analytical activities of the Financial Administration of the Slovak Republic is used as evidence in criminal proceedings without properly meeting the standards set by the Criminal Procedure Code.

ABSTRAKT

Odhaľovanie daňových trestných činov, najmä tých spojených s podvodmi na dani z pridanej hodnoty, predstavuje zložitý proces, v ktorom sa prelína činnosť daňových orgánov, finančnej správy a orgánov činných v trestnom konaní. V snahe o zabezpečenie efektívnosti vyšetrovania sa v praxi často využívajú rôzne formy operatívno-pátracej činnosti, analytické nástroje a informácie pochádzajúce z daňového konania. Tieto postupy však so sebou prinášajú zvýšené riziko porušenia zásady zákonnosti dôkazov a vzniku tzv. nezákonne získaných dôkazov. Pozornosť v článku sústreďujeme na situácie, keď sú informácie získané počas daňovej kontroly alebo samostatnej analytickej činnosti Finančnej správy Slovenskej republiky využité ako dôkazy v trestnom konaní, bez náležitého splnenia štandardov v zmysle Trestného poriadku.

I. INTRODUCTION

The detection and clarification of tax crimes presents a particular challenge for law enforcement authorities (hereinafter referred to as "LEAs"), particularly in terms of evidence gathering, procedural guarantees, and the material legality of the obtained evidence. Given the nature of tax crime, which often involves complex chains of various legal actions, fictitious business relationships, and sophisticated economic operations in the form of various taxable transactions, criminal proceedings in these matters are inevitably linked to the activities of administrative bodies, i.e., tax authorities. The result of this cooperation is the transfer of various types of information and materials, primarily based on conducted tax audits, but also on analytical reports from relevant units of the Financial Administration of the Slovak Republic (hereinafter referred to as "FASR") or other administrative proceedings, into the criminal process, where they further serve as evidentiary materials in criminal proceedings.

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Such an overlap between administrative proceedings and criminal proceedings naturally raises fundamental questions concerning the procedural admissibility of evidence produced outside the framework of the Criminal Procedure Code (Act No. 301/2005 Coll., as amended; hereinafter the "*Criminal Procedure Code*"). The key issue is whether, and under what conditions, law enforcement authorities may rely on materials originating from tax proceedings as evidence, particularly where the manner in which such materials were obtained or the extent of the interference with the rights of the affected person would not be permissible in criminal proceedings. The case law of the Court of Justice of the European Union (hereinafter the "*CJEU*") and of national courts indicates that the use of evidence obtained in other types of proceedings is not excluded per se; however, it is subject to a strict test of legality, proportionality, and the preservation of the rights of the accused.

Judicial authorities, as well as the academic community, have in recent years focused primarily on the question of the conditions under which evidence originating from criminal proceedings may be used in tax proceedings. A significant contribution in this regard is provided by the judgment of the CJEU in Case C-419/14 *WebMindLicenses Kft.* and by the decision of the Supreme Administrative Court of the Slovak Republic, file no. 4Sfk/110/2022, which confirm that the transfer of evidence between criminal and tax proceedings is possible, albeit only under strictly defined conditions.² It is essential that such evidence be obtained in accordance with the law, that its use have a clear legal basis, and that the taxable person be guaranteed the right to defence, including the opportunity to become acquainted with the evidence and to comment on it. At the same time, case law emphasises that not every procedural act of LEAs (for example, a decision on the initiation of criminal prosecution or the bringing of charges) constitutes evidence that may, without further assessment, be used as a basis for a decision by an administrative authority.³

These conclusions, however, naturally give rise to the opposite, "*mirror*" question, which has not yet been systematically addressed in Slovak legal theory and practice: under what conditions may evidence originating from tax proceedings be used in criminal proceedings, in particular tax audit reports, findings of the financial administration, analytical outputs, or other materials obtained under Act No. 563/2009 Coll. on the Administration of Taxes (the Tax Code), as amended (hereinafter the "*Tax Code*").⁴ This is an issue situated at the intersection of criminal procedure, tax procedure, and constitutional guarantees of fundamental rights and freedoms, whose practical significance becomes particularly evident in cases where tax proceedings precede criminal prosecution or are conducted in parallel with it.

A specific feature of tax proceedings lies in their distinct "*procedural philosophy*", as different principles apply than in criminal proceedings. Tax proceedings are based on the principle of cooperation of the taxable person and on a different allocation of the burden of proof. In the course of a tax audit, the taxable person is required to prove facts that affect the correct determination of tax liability, facts that they are obliged to state in tax returns or other filings submitted under special legislation, facts the substantiation of which has been requested by the tax authority in the administration of taxes, as well as the credibility, accuracy, and

² Court of Justice of the European Union (Third Chamber). Judgment of 17 December 2015, *WebMindLicenses Kft. v. Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága*, Case C-419/14, ECLI:EU:C:2015:832. [online] Available from: <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:62014CJ0419> [Accessed 9. november 2025].

³ JAROŠOVÁ, B. Evidence in Tax Proceedings and Evidence from Criminal Proceedings. DAUČ.sk. Bratislava: Poradca podnikateľa, 2022. [online] Available from: <https://www.dauc.sk/clanky/5325/dokazovanie-v-danovom-konani-a-dokazy-z-trestneho-konania> [Accessed 9. november 2025].

⁴ BELNAP, A. - HOOPES, J.L. - MAYDEW, E.L. et al. : Real effects of tax audits. In: *Review of Accounting Studies*, 2024, roč. 29, s. 665–700. [online] Available from: <https://link.springer.com/article/10.1007/s11142-022-09717-w> [Accessed 9. november 2025]. DOI: <https://doi.org/10.1007/s11142-022-09717-w>.

completeness of records and documentation that they are obliged to keep.⁵

It is precisely this increased duty of cooperation imposed on the taxable person that entails a heightened potential for interference by public authorities with the individual's fundamental rights. Any interference by public authorities with individual rights, including interferences carried out within the framework of administrative proceedings, must meet the requirements of legality, proportionality, and necessity; exceeding these limits results in an unacceptable infringement of fundamental rights.⁶

Accordingly, the mechanical transfer of evidence from tax proceedings into criminal proceedings, without taking into account these differences and the inherent disproportions between the respective procedural regimes, entails a risk of violating procedural safeguards, particularly where evidence obtained in the formally more „*lenient*“ administrative or tax proceedings is used in isolation to justify a criminal-law interference with the rights of the accused.

In assessing the admissibility of evidence originating from tax proceedings in criminal proceedings, practice demonstrates the need for a combined approach that reflects the differences between tax procedure and criminal procedure. It is relevant to examine not only whether the evidence was obtained in accordance with the rules governing tax proceedings, but also whether its subsequent use in criminal proceedings respects the principles of criminal procedure and constitutional guarantees. For this reason, it is analytically appropriate to apply a dual set of criteria: (i) the formal legality of the acquisition of the evidence in tax proceedings, and (ii) the preservation of material procedural integrity in its use in criminal proceedings.⁷

This issue also arises in a broader context within the comparative approaches of certain European jurisdictions, which examine the extent to which the transfer of evidence between administrative and criminal proceedings can be accepted without undermining the integrity of a fair trial. These considerations focus primarily on situations in which procedural standards at the administrative level are insufficiently rigorous, which may subsequently give rise to problems concerning the legality and admissibility of evidence in criminal proceedings.⁸

In light of the foregoing, the central question addressed by this paper is whether, and under what conditions, LEAs may use evidence originating from tax proceedings – such as tax audit reports, statements of taxable persons, or various analytical reports of the FASR - as evidentiary means in criminal proceedings. Closely related to this is the need to examine whether such evidence must be retaken or reproduced in accordance with the Criminal Procedure Code, what the scope of review of the legality of its acquisition should be, and where the boundary lies between the permissible use of such information and its procedural inadmissibility.

The methodological framework of this paper is based on a combination of several research methods typical of legal scholarship. Their purpose is to provide a detailed examination of the legality and procedural admissibility of evidence transferred between tax proceedings and criminal proceedings. Primarily, an analytical–doctrinal method is employed, through which the structure and content of the relevant legal regulations are examined, in particular the Criminal Procedure Code, the Tax Code, constitutional norms, and the relevant international

⁵ Section 24(1) of the Tax Procedure Code.

⁶ ŠTRKOLEC, M. Restriction of Fundamental Rights and Imposition of Obligations in the Exercise of Public Authority. In: Milestones of Law in the Central European Area 2013. Bratislava: Comenius University, 2013, pp. 147–154. ISBN 978-80-7160-368-9.

⁷ ZAJAC, K. The Admissibility of Tainted Evidence in Criminal Proceedings as a Rule of Law Issue under the ECHR. Criminal Law Forum, 2025, vol. 36, no. 1, pp. 33–62. DOI: <https://doi.org/10.1007/s10609-024-09496-w>.

⁸ CARBONE, V. Penal Evidence in the Tax Process: The Lawful Use of Illegitimately Acquired Criminal Evidence in Italy. In: Internal and Criminal Investigations of Criminal Offences Affecting the EU Financial Interests. Miskolc: University of Miskolc, 2022, pp. 146–167. ISBN 978-615-5869-38-2. [online] Available from: https://euiniv.uni-miskolc.hu/files/20573/Hercule_tanulmanykotet_fedel_beliv_1_502old.pdf#page=146 [Accessed 12. november 2025].

legal obligations of the Slovak Republic.

The primary source for verifying the legal conclusions is jurisprudential analysis, encompassing decisions of the general courts, the Supreme Court of the Slovak Republic (hereinafter the "SCSR"), the Constitutional Court of the Slovak Republic (hereinafter the "CCSR"), and the CJEU. This method makes it possible to precisely identify interpretative trends in judicial decision-making, established practice in assessing the legality of evidence, and the limits of transferring information between different procedural regimes.

The paper also employs the comparative method, applied primarily to the so-called "fruit of the poisonous tree" principle, with the aim of identifying how foreign legal systems address the consequences of unlawfully obtained evidence and to what extent these concepts are relevant for the Slovak legal order. Comparative analysis serves as a tool for the critical evaluation of domestic solutions and enables the identification of gaps or potential risks in current legal practice.

The analysis is further supplemented by a normative–critical method, which serves to assess the current state of the law (*de lege lata*), to identify problematic areas, and to formulate scholarly reflections and recommendations (*de lege ferenda*), particularly with regard to the rules governing the transfer of evidence between tax proceedings and criminal proceedings and the assessment of the material legality of evidence.

This methodological combination makes it possible to develop an integrated and multidimensional perspective on the issue under examination, with an emphasis on preserving constitutional guarantees, respecting the principles of a fair trial, and taking into account broader European standards.

II. LEGAL FRAMEWORK OF EVIDENCE IN CRIMINAL PROCEEDINGS

Evidence-taking in criminal proceedings constitutes a fundamental pillar and the 'core' of criminal procedural activities of law enforcement authorities as well as courts. Its objective is to establish the facts of the case in such a manner that no reasonable doubts remain.⁹

Closely linked to the process of evidence-taking is the principle of the legality of evidence, which requires that every piece of evidence be obtained, produced, and evaluated exclusively in a manner consistent with procedural rules. Although the Criminal Procedure Code does not expressly define the concept of "evidence", established legal doctrine understands it as any piece of information reflecting objective reality that is capable of contributing to the establishment of the facts of the case and that has been obtained in accordance with the law.¹⁰ The principle of the legality of evidence also serves as a "corrective" to the principle of the free evaluation of evidence, which allows law enforcement authorities to assess evidence according to their own inner conviction, but always on the basis of the law, logical reasoning, and the circumstances arising from the factual context of the investigated case. Any evidence obtained in a manner contrary to the law or constitutional guarantees is excluded from criminal proceedings as procedurally inadmissible.¹¹ Such exclusion serves to prevent the state from employing unlawful methods to achieve the objectives of criminal prosecution and to preserve the legitimacy of the criminal process as an integral component of the rule of law.

⁹ IVOR, J. Subject and Scope of Evidence in Pre-Trial Criminal Proceedings. In: Proceedings of the Scientific Conference "Current Issues of Pre-Trial Criminal Proceedings". Bratislava: Paneuropean University, 2014, pp. 38–41. [online] Available from: http://www.paneurouni.com/wp-content/uploads/2017/03/00-zbornik-akt_probl_pripr_konania_trestneho_tisk4_final.pdf [Accessed 12. november 2025].

¹⁰ ŠTRKOLEC, M. Introduction to Criminal Procedural Law. Košice: Pavol Jozef Šafárik University, 2022. ISBN 978-80-8152-983-1. [online] Available from: <https://unibook.upjs.sk/img/cms/2022/pravf/uvod-do-trestneho-prava-procesneho.pdf> [Accessed 12. november 2025].

¹¹ LAJOŠOVÁ, I. Unlawfully Obtained vs. Unlawfully Taken Evidence in Civil Litigation. Legestic, 2024, vol. 2, pp. 16–23. Available from: <https://legestic.org/index.php/journal/article/view/9> [Accessed 13. november 2025].

The constitutional foundation of this principle can be found in Articles 16, 17, and 46 to 50 of the Constitution of the Slovak Republic, as well as in Articles 6 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. These provisions establish, inter alia, that no one may be compelled to testify against themselves (the principle of *nemo tenetur se ipsum accusare*), and that interferences with an individual's private life may be carried out only on the basis of law, to the extent necessary, and subject to judicial oversight.¹²

Consequently, any violation of these rights in the process of obtaining evidence results in its procedural inadmissibility, and the court is obliged to disregard such evidence. This requirement has been repeatedly affirmed by the case law of the CCSR¹³ and SCSR¹⁴, according to which the legality of evidence constitutes a fundamental prerequisite of a fair trial. These premises simultaneously constitute the theoretical framework from which the fundamental principles of criminal proceedings are derived. It is precisely through these principles that evidence-taking is ensured not to be merely a technical process of gathering information, but also a value-based activity that respects individual rights, the principle of a fair trial, and the constitutional balance between the powers of the state and the protection of the individual.

The principles of criminal proceedings form a coherent system of legal principles aimed at ensuring a balance between the protected interest of society in the punishment of criminal offenders and the protection of individual rights.¹⁵ These principles constitute not only an interpretative framework but also a criterion for the legality and fairness of proceedings. Any evidence-taking that does not comply with these principles cannot, in light of the foregoing, serve as a basis for a decision in a criminal case.

A key principle is the legality of evidence, which derives from Sections 2(10) and 119(1) of the Criminal Procedure Code. Pursuant to these provisions, law enforcement authorities are obliged to obtain and produce evidence in accordance with the law, and every piece of evidence must be obtained by lawful means and in a manner that respects the fundamental rights and freedoms of the persons concerned. Evidence obtained in violation of the law is, as a rule, procedurally inadmissible.¹⁶ This principle is also of fundamental importance when assessing the possibility of using evidence originating from other types of proceedings, such as tax proceedings, where different procedural standards apply.

Pursuant to Section 2(10) of the Criminal Procedure Code, LEAs are obliged to establish the facts of the case in such a manner that no reasonable doubts remain, both in favour of and to the detriment of the accused. The public interest requires that evidence incriminating the accused and evidence in their favour be sought with equal diligence. This principle also gives rise to the obligation of LEAs to examine the credibility and legality of evidence originating from other proceedings - such as tax audit reports or other analytical outputs produced by the FASR - before relying on them as evidentiary means in criminal proceedings.

The principle of the presumption of innocence is constitutionally enshrined in Article 50(2) of the Constitution of the Slovak Republic, as well as in Section 2(4) of the Criminal Procedure Code, and constitutes one of the most important guarantees of a fair trial. This principle also

¹² LOVICH, D. Requirements for Reasoning Orders for Interception of Telecommunications in the Case Law of Slovak Supreme Courts and the Court of Justice of the EU. *Studia Iuridica Cassoviensia*, 2024, vol. 12, no. 1, pp. 158–169. ISSN 1339-3995.

¹³ Constitutional Court of the Slovak Republic. Resolution, Case No. I. ÚS 426/2014, 13 August 2014.

¹⁴ Supreme Court of the Slovak Republic, Case No. 6Asan/9/2017, 21 February 2018.

¹⁵ JANKO, S. Historical Development of the Fundamental Principles of Criminal Proceedings. Nitra: Academy of the Police Force, 2019. [online] Available from: <http://87.197.171.168:8080/webisnt/fulltext/clanky/NIA2019-2/JANKO%20SEBASTI%C3%81N%20%20Historick%C3%BD%20v%C3%BDvoj%20z%C3%A1kladn%C3%BDch%20z%C3%A1sad%20trestn%C3%A9ho%20konania.pdf> [Accessed 13. november 2025].

¹⁶ MICHALOV, L.; TOMÁŠ, L. The Fruit of the Poisonous Tree Doctrine in Current Constitutional Court Case Law. *Bulletin of the Slovak Bar Association*, 2022, vol. 28, no. 7–8. ISSN 1335-1079.

has a direct impact on the assessment of evidence originating from tax proceedings, as LEAs may not base the guilt of the accused solely on administrative or "tax" findings that have not undergone a criminal-procedural test of legality.

At the same time, it is necessary to emphasise that the procedural admissibility of evidence originating from tax proceedings cannot circumvent the principle of the presumption of innocence and the prohibition of self-incrimination.¹⁷ LEAs must therefore always take into account whether the content of a tax-related document arose as a result of the taxable person's duty to cooperate, which is significantly broader in tax proceedings than in criminal proceedings. The transfer of evidence from a situation in which an individual is de facto compelled to testify or to provide information under the threat of sanctions into proceedings governed by the prohibition of compelled self-incrimination may constitute an impermissible circumvention of constitutional safeguards.¹⁸

If there are doubts as to whether evidence was obtained or produced in compliance with criminal procedural law, the decision must be made in favour of the accused, in accordance with the principle of *in dubio pro reo*.

Another key principle is the free evaluation of evidence, as set out in Section 2(12) of the Criminal Procedure Code. Neither the court nor other authorities are bound by formal rules of evidence; rather, they assess evidence according to their own inner conviction, based on a careful consideration of all the circumstances of the case. This, however, does not imply arbitrariness - the inner conviction must be rationally justified and grounded in evidence obtained by lawful means. In the context of using evidence originating from tax proceedings, the principle of the free evaluation of evidence is of particular importance. The court or LEAs must carefully assess the manner in which tax evidence was obtained, whether its use interferes with constitutionally guaranteed safeguards, and must also evaluate its relevance and probative value within the criminal-law context.

The principle of establishing the facts of the case beyond reasonable doubt expresses the requirement for a complete and reliable determination of the factual circumstances of the case. A finding of guilt and a conviction may be rendered only where no rational doubts arise as to the facts forming the basis of the accused's guilt. In practice, this means that if doubts exist regarding the truthfulness or legality of evidence obtained from tax proceedings, such evidence must either be excluded or assessed with appropriate "caution", depending on the nature of the factual circumstances of the case.

The legal framework governing evidence in criminal proceedings is built upon a system of principles that guarantee legality, fairness, and the right to a fair trial. The application of these principles is equally crucial when assessing evidence originating from other legal proceedings. Any evidence that has not been obtained in a manner consistent with the requirements of the Criminal Procedure Code and constitutional guarantees must be regarded as inadmissible in criminal proceedings. Respect for these principles therefore represents not only a legal obligation of LEAs, but also a necessary condition for maintaining a fair trial and public confidence in the criminal justice system.

¹⁷ CATERINI, M. The Presumption of Innocence in Europe: Developments in Substantive Criminal Law. *Beijing Law Review*, 2017, vol. 8, pp. 100–140. [online] Available from: https://www.researchgate.net/publication/315697177_The_Presumption_of_Innocence_in_Europe_Developments_in_Substantive_Criminal_Law. [Accessed 13. november 2025] DOI: <https://doi.org/10.4236/blr.2017.81007>.

¹⁸ KREMENS, K. Criminal Process Faced with the Challenges of Scientific and Technological Development. *European Journal of Crime, Criminal Law and Criminal Justice*, 2021, vol. 29, no. 2, pp. 123–145. DOI: <https://doi.org/10.1163/15718174-12340097>.

III. ADMISSIBILITY OF EVIDENCE FROM TAX PROCEEDINGS IN CRIMINAL PROCEEDINGS

The issue of the admissibility of evidence produced in tax proceedings has also been addressed by the Supreme Court, which held that: "Tax proceedings constitute proceedings that are separate and independent from criminal proceedings and are not governed by the regulations governing the procedural conduct of law enforcement authorities. If the actions of the tax authorities are affected by unlawfulness -for example, due to the involvement of a territorially incompetent tax authority or the failure to comply with statutory time limits - then the entire tax proceeding is tainted by unlawfulness. However, this does not mean that the results of tax audits embodied in tax audit reports or records of oral hearings before the tax authority, etc., cannot be used in criminal proceedings."¹⁹ The cited conclusion is based by the Supreme Court on the premise that, in criminal proceedings, anything that may contribute to the proper clarification of the case may serve as evidence, provided that it has been established through evidentiary means in accordance with this Act or a special statute.²⁰

The Supreme Court further elaborates on these conclusions and expresses the view that it cannot be asserted that the tax returns submitted by the accused in the case at hand lack evidentiary admissibility for the purposes of criminal proceedings solely because the entire tax proceeding was, according to the Supreme Court's decision in administrative proceedings, unlawful.²¹ In this context, the court further concluded that: "Law enforcement authorities did not violate the law in obtaining this evidence, and these evidentiary materials contain expert information relevant to criminal proceedings. Their unlawfulness for the purposes of tax proceedings, consisting in a formal defect in the conduct of the tax audit by a territorially incompetent authority, does not entail a loss of their substantive content.' In our view, this approach insufficiently reflects the distinction between the formal and the material legality of evidence. The results of a tax audit and the precise determination of the scope of an excessive tax deduction possess substantive value for criminal proceedings as expert assessments and therefore constitute evidence relevant to criminal proceedings. In criminal proceedings, provided that they have been or will be produced at the main hearing in a lawful manner, such evidence may be used in the process of evidence-taking, and in particular in the process of its evaluation."²²

In this respect, and in view of the subject matter of this paper, it is necessary to express disagreement with this legal conclusion as formulated, for several reasons.

It is an undisputed fact that tax proceedings are governed by the rules arising from the Tax Code. Evidence collected during a tax audit, and subsequently in follow-up tax proceedings after the issuance and service of a tax audit report, is recorded in official records or minutes in accordance with the provisions of the Tax Code.²³ The subsequent "transfer" of these findings into criminal proceedings cannot, under any circumstances, occur in a "mechanical" manner; rather, it is necessary to carry out the individual pieces of evidence in accordance with the provisions of the Criminal Procedure Code (for example, the examination of witnesses from a tax audit, for which minutes were drawn up pursuant to the Tax Code).²⁴

By virtue of the differences between tax proceedings and criminal proceedings, procedural irregularities in tax proceedings may have different consequences than irregularities in criminal proceedings; consequently, the interpretation of tax procedural rules tends to be more "lenient"

¹⁹ Supreme Court of the Slovak Republic. Judgment, Case No. 3Tdo/8/2018, 15 May 2019.

²⁰ Section 119(2) of the Criminal Procedure Code.

²¹ Supreme Court of the Slovak Republic. Judgment, Case No. 3Tdo/8/2018, 15 May 2019.

²² Ibid.

²³ Section 47 of the Tax Procedure Code.

²⁴ LAJOŠOVÁ, I. An unlawfully obtained vs. unlawfully taken evidence in civil litigation. *Legestic*, 2024, roč. 2, s. 16–23.

from a formal perspective. For example, the expiry without effect of the 30-day or 60-day time limit for issuing a decision by a second-instance tax authority (or the 120-day time limit in cases where the deadline for issuing a decision by a superior authority has been extended²⁵) it is established that failure to comply with a statutory time limit, in itself, does not generally constitute grounds for declaring a decision unlawful, provided that such failure has not resulted in a substantial violation of the principle of legality, the right to a fair trial, or an interference with the fundamental rights of the taxable person.²⁶ By contrast, the case law of the competent courts concerning the passage of time in the context of tax audits – during which there is a direct interference with the rights of taxable persons - indicates that if the duration of a tax audit exceeds the maximum period prescribed by law, despite the fact that the audited taxable person did not refuse the required cooperation with the tax authority, the report from such a tax audit constitutes unlawfully obtained evidence and may not be used in tax proceedings.²⁷

In the context of the disagreement expressed with the above-cited judgment of the SCSR, it is therefore appropriate to refer to the so-called "*fruit of the poisonous tree*" doctrine and to examine the interpretation of the cited judgment from this perspective as well. The fruit of the poisonous tree doctrine is most commonly applied in legal theory in connection with the process of evidence-taking in criminal proceedings, although its application is not strictly limited to this area. This approach also finds strong support in comparative legal scholarship. For example, extensive analyses of the legal systems of several countries – including the United States, Germany, and Spain - demonstrate that the use of evidence derived from originally unlawful evidence leads to a chain of procedural inadmissibility, which fundamentally undermines the legitimacy of criminal proceedings.²⁸ The issue of the applicability and limits of this doctrine has also been addressed implicitly by the European Court of Human Rights, which does not work with this doctrine explicitly; however, through the concept of a fair trial and the protection of the core of fundamental rights, it effectively arrives at outcomes comparable to those entailed by the doctrine described above.²⁹

The doctrine is based on the principle that evidence obtained in violation of the law (so-called primary evidence) also "contaminates" subsequent evidence if such evidence is derived from it, whether directly or indirectly. In other words, the unlawfulness of the originally obtained evidence is transferred to derivative evidence, thereby resulting in a chain of procedural inadmissibility.³⁰

From this perspective, the fruit of the poisonous tree doctrine acquires particular significance, as it emphasises the material aspect of the legality of evidence and prevents subsequently obtained "secondary" evidence from legitimising initial procedural irregularities. In the context of interactions between tax law and criminal law, the application of this doctrine constitutes, in my view, an effective corrective against the risk of circumventing procedural safeguards through formally less stringent administrative procedures.³¹

²⁵ Section 65(2) of the Tax Procedure Code.

²⁶ Supreme Court of the Slovak Republic. Judgment, Case No. 9Sžsk/162/2018, 30 October 2019.

²⁷ Constitutional Court of the Slovak Republic. Resolution, Case No. III. ÚS 24/2010-57, 29 June 2010.

²⁸ PAŮL, Á. Admissibility of Evidence Before the Inter-American Court of Human Rights. *Revista Direito GV*, 2017, vol. 13, no. 2. [online] Available from: <https://ssrn.com/abstract=3024649> [Accessed 14. november 2025]] DOI: <http://dx.doi.org/10.1590/2317-6172201726>.

²⁹ MACULA, L. The Potential to Secure a Fair Trial Through Evidence Exclusion: A Swiss Perspective. In: GLESS, S.; RICHTER, T. (eds.) *Do Exclusionary Rules Ensure a Fair Trial? Ius Gentium: Comparative Perspectives on Law and Justice*, vol. 74. Cham: Springer, 2019. [online] Available from: https://www.researchgate.net/publication/332488654_The_Potential_to_Secure_a_Fair_Trial_Through_Evidence_Exclusion_A_Swiss_Perspective [Accessed 13. december 2025] DOI: https://doi.org/10.1007/978-3-030-12520-2_2.

³⁰ BURDA, E. Commentary on Section 119 of the Criminal Procedure Code. In: ČENTÉŠ, J. – KURILOVSKÁ, L. – ŠIMOVCĚK, I. – BURDA, E. et al. *Criminal Procedure Code I. Sections 1–195*. Bratislava: C. H. Beck, 2021, p. 749.

³¹ THUYEN, T. D. Fruit of the Poison Tree Doctrine in U.S. Criminal Proceedings and Regulations on the Exclusion of Evidence in Vietnamese Criminal Proceedings. *International Journal for the Semiotics of Law*, 2025, vol. 38, no. 2, pp.

As noted above, and as also cited by the Supreme Administrative Court of the Slovak Republic, even if LEAs in the case at hand acted in accordance with criminal law and the Criminal Procedure Code and committed no procedural irregularities in the criminal proceedings themselves, it nevertheless remains relevant, in light of the aforementioned doctrine, to pose the following question: are the subsequently produced items of evidence in criminal proceedings not unlawful if the initial indicator suggesting the very existence of a criminal offence was tainted by unlawfulness (even if it originated in a different - separate - type of proceedings)?

According to relevant scholarly views, it follows in this context that where it is apparent in legal practice that a particular piece of evidence would not have been obtained in criminal proceedings in the ordinary course of law enforcement activity, and where the only rational explanation for its serving as the basis of a specific decision lies in its derivation from an originally unlawful piece of evidence, and no reasonable grounds exist to conclude otherwise, it is imperative to apply the fruit of the poisonous tree doctrine and to exclude such evidence from criminal proceedings.³² In view of the foregoing, it is, in our opinion, appropriate to rely on the aforementioned doctrine, since without the findings contained in the tax audit report, LEAs would not have had the necessary indicators to initiate criminal prosecution in the matter at all.³³

In the context of the formulation adopted by the SCSR, according to which *"in the case at hand, law enforcement authorities obtained all tax-related materials for the purposes of criminal prosecution lawfully, including statements of tax office employees in the form of their examinations as witnesses pursuant to the Criminal Procedure Code, tax audit reports, records of oral hearings, tax returns, and similar documents"* it is appropriate to draw attention to the fact that individual, "isolated" items of evidence produced in tax proceedings - such as a VAT control statement - constitute, in themselves, merely formal documents and do not objectify the facts declared therein (similarly to, for example, an invoice or a tax return). The data contained in a VAT control statement do not, in themselves, have legally binding character and cannot be attributed constitutive effects; rather, they represent information of a declaratory nature, serving primarily informational and supervisory purposes for the tax authority. In this regard, the SCSR concluded that: *"the data contained in a VAT control statement may be regarded as data of an evidentiary nature, declared by the taxable person; however, similarly to an invoice, it is necessary for the accuracy of such data to be credibly demonstrated and for them to reflect reality. A VAT control statement and the data contained therein may therefore be considered as one of the pieces of evidence serving to prove the occurrence of a taxable supply (similarly to, for example, an invoice), but it cannot be accepted that a VAT control statement alone (i.e. without additional evidence) could be regarded as relevant evidence proving the actual occurrence of a taxable supply beyond any doubt."*³⁴

Naturally, in light of the foregoing, the question arises as to why a record drawn up during a tax audit - i.e. within tax proceedings - could not serve as a basis for initiating criminal prosecution (given that relevant information necessary for initiating criminal proceedings

443–461. [online] Available from: https://www.researchgate.net/publication/379079492_Fruit_of_the_Poison_Tree_Doctrine_in_US_Criminal_Proceedings_and_Regulations_on_the_Exclusion_of_Evidence_in_Vietnamese_Criminal_Proceedings [Accessed 13. december 2025] DOI: 10.1007/s11196-024-10129.

³² ŠTRKOLEC, M. Legality in Criminal Law. Bratislava: C. H. Beck, 2022. ISBN 978-80-8232-017-9.

³³ HODGSON, J. Constructing the Pre-Trial Role of the Defence in French Criminal Procedure: An Adversarial Outsider in an Inquisitorial Process? *The International Journal of Evidence & Proof*, 2002, vol. 6, no. 1, pp. 1–16. [online] Available from: https://www.researchgate.net/publication/228134955_Constructing_the_Pre-Trial_Role_of_the_Defence_in_French_Criminal_Procedure_An_Adversarial_Outsider_in_an_Inquisitorial_Process [Accessed 13. december 2025] DOI: <https://doi.org/10.1177/136571270200600101>.

³⁴ Supreme Court of the Slovak Republic. Judgment, Case No. 3Sžfk/94/2019, 30 June 2021.

cannot be extracted solely from data contained in a tax return, an invoice, or a VAT control statement). At this point, it is precisely in light of the *"fruit of the poisonous tree"* doctrine that attention must be drawn to the effects of the unlawfulness of the tax audit report itself. An unlawful tax audit report results in the unlawfulness of the entire tax audit and of the acts preceding it, including any subsequent related tax proceedings, such as assessment proceedings.³⁵ This means that, in a model situation, even if LEAs were to rely on information contained in the record of a witness examination conducted during a tax audit or within tax proceedings, such a procedural act would still be tainted by unlawfulness. Consequently, the same question arises as to whether subsequent evidence produced in criminal proceedings is likewise unlawful and affected by the same defect of illegality as the very basis for initiating criminal prosecution in this case, the record of a witness examination conducted in tax proceedings.

The results of the present analysis also indicate the need for legislative and jurisprudential clarification of the boundaries governing the transfer of evidence between tax proceedings and criminal proceedings, particularly with regard to defining the criteria for the legality of derivative evidence, clearly delineating the limits of cooperation between the financial administration and LEAs, and regulating procedural safeguards in the use of administrative materials in criminal proceedings. When formulating exclusionary rules, it is not possible to abstract from the broader context of the mass collection of information by public authorities.³⁶ An overly narrow conception of the unlawfulness of evidence may lead to a de facto weakening of the protection of fundamental rights. Strengthening these rules may significantly contribute to legal certainty, the protection of the fundamental rights of the persons concerned, and the prevention of procedural errors that have the potential to adversely affect the outcome of criminal prosecution.

IV. CONCLUSION

The issue of using evidence originating from tax proceedings in criminal proceedings constitutes a particularly sensitive area in which two procedural regimes with differing philosophies, purposes, and degrees of interference with fundamental rights intersect. As demonstrated by the analysed domestic and European case law, the transfer of evidence between these proceedings cannot be carried out mechanically or formalistically, but requires a thorough assessment of the legality, proportionality, and material integrity of each individual piece of evidence.

The analysis conducted shows that although Slovak courts have, in certain decisions, acknowledged the procedural admissibility of outcomes of tax proceedings in criminal proceedings, such conclusions cannot be understood as universally and unconditionally applicable. On the contrary, there is a clear need for a precise assessment of the manner in which the evidence was obtained and of its procedural context, particularly where there is a risk that it was acquired in breach of the rules governing tax proceedings or constitutional guarantees. Circumstances such as exceeding the statutory time limit for conducting a tax audit, interference with privacy without a legal basis, or the absence of an opportunity for the affected party to acquaint themselves with the materials of the proceedings give rise to serious doubts as to the procedural admissibility of such evidence.

In conclusion, it may be stated that the question of the admissibility of evidence originating from tax proceedings in criminal proceedings will continue to be of fundamental importance in the field of detecting and prosecuting tax crime. In a state governed by the rule of law, however,

³⁵ Supreme Administrative Court of the Slovak Republic. Judgment, Case No. 3Sfk/41/2022, 28 August 2023.

³⁶ PANZAVOLTA, M. Exclusion of Evidence in Times of Mass Surveillance: How General Can Exclusionary Rules Be? *International Journal of Evidence & Proof*, 2022. [online] Available from: <https://journals.sagepub.com/doi/abs/10.1177/13657127221088328> [Accessed 13. december 2025] DOI: 10.1177/13657127221088328.

the effectiveness of criminal prosecution cannot take precedence over the protection of fundamental rights; accordingly, public authorities are obliged to proceed in this area with particular caution, consistency, and in conformity with the constitutional principles of a fair trial.

These conclusions simultaneously open space for further academic discussion, particularly with regard to a more precise delineation of the criteria governing the procedural admissibility of derivative evidence and the limits of transferring evidence between tax and criminal proceedings. Special attention in future research should also be paid to the extent to which information obtained through administrative procedures may subsequently serve as a basis for criminal prosecution without risking the circumvention of procedural safeguards inherent in criminal proceedings. These issues therefore represent a significant challenge for further doctrinal, judicial, and legislative development in this field.

KEY WORDS

illegally obtained evidence, evidence, criminal proceedings, tax offences, tax procedure, legality of evidence, procedural admissibility of evidence, Code of Criminal Procedure

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nezákonne získané dôkazy, dokazovanie, trestné konanie, daňové trestné činy, daňové konanie, zákonnosť dôkazov, procesná použiteľnosť dôkazov, Trestný poriadok

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