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The relation between the fruit of the poisonous tree concept and the rule of free appraisal of evidence in view of Polish and European Union law

Summary

Polish criminal procedure includes so-called principle of free appraisal of evidence, which is regulated by article 7 of the Code of Penal Procedure. The aforementioned article states that “the agencies responsible for the proceedings shall make a decision on the basis of their own conviction, which shall be founded upon evidence taken and appraised at their own discretion, with due consideration to the principles of sound reasoning and personal experience”.

Consequently, applying the aforementioned principle results in not applying the so-called principle of fruits of poisoned tree. In other words, evidence obtained in discord with law is not losing its power and may be taken into account during giving verdict in trial. Even obtained in the obviously wrong way evidence will be analyzed by the appropriate Court of law and will be appraised whether it is enough credible to be used in a trial or not. The situation is more serious when such evidences are the only one that Prosecutor got and create all accusations on the ground of it.

The Code of Penal Procedure does not directly refer to the principle of fruits of poisoned tree. However, it constitutes definite evidence restrictions, which creates barriers in process of discovering the truth in trial. There is a strict regulation of those evidence restrictions, which cannot be interpreted in the large extent and with using analogy. Those evidence rules does not refer to aforementioned principle as well.

The criterion of using evidence in trials, that was obtained in discord with law, will be case law of common courts and the Supreme Court. On the background of aforementioned case law it is very easy to notice the evolution, which leads to limitation of applying the principle of fruits of poisoned tree.

Issues of the aforementioned principle were conscientiously analyzed by the European Court of Human Rights in Strasbourg.

Keywords: free appraisal of evidence, fruits of poisoned tree, evidence restrictions, true fact situation, unconventional evidences