

Wrocław, 1 October 2017

mgr Agnieszka Skorupka  
Civil Procedure Department  
Institute of Civil Law  
Faculty of Law, Administration and Economics  
University of Wrocław

### **Summary**

**of the doctoral thesis: „Admissibility of unlawful evidence in civil procedure”  
written under the supervision of prof. dr hab. Elwira Marszałkowska-Krzes**

This doctoral thesis focuses on the issues of unlawful evidence and its admissibility in civil procedure. Because of the lack of explicit regulation in the civil procedure code (k.p.c.) the matter of admitting and using unlawful evidence in civil proceedings is one of the most controversial issues in the jurisprudence of civil procedure.

The main goal of this thesis is to attempt to characterize and define unlawful evidence as well as to outline the limits of its admissibility in Polish civil proceedings.

The research problem is to determine to what extent unlawful evidence is admissible in civil proceedings. Solving this problem requires making an assumption that unlawful evidence is generally admissible in civil court proceedings, however, there are some types (kinds) of unlawful evidence which should not be admitted and utilized in civil proceedings. In connection to the above, the solution of the research problem will consist of indicating the methods and tools which can be used to identify the limits of admissibility of unlawful evidence.

The main assumption is that unlawful evidence is admissible in civil proceedings. This is supported by the lack of evidence limitation in k.p.c. and the constitution as well as the constitutionally guaranteed right of access to a court. However, the right to privacy must be indicated as a counterbalance to the constitutionally protected right of access to a court; the right to privacy should not be infringed on when obtaining evidence as the protection of some rights cannot be provided at the expense of violating other rights.

The essence of the question of admissibility of unlawful evidence comes down to the wider issue of conflict of rights and the methods of removing the conflict between the

protection of conflicting fundamental rights and freedoms of individual. The conflict of interests of the parties of a proceeding in fact constitutes a conflict between constitutional rights: the right of access to a court and the right to be heard which is derived from the former and is connected to the right to evidence and the right to protection of dignity and the respect for human dignity, the right to protection of private and family life, personal image, secret of communication, correspondence, inviolability of the home and reputation.

The basis for selecting the topic of this thesis was a logical conclusion that an evidence must be admitted in order to be used in civil proceedings, hence, admitting evidence is the key moment of the proceeding, not the unfettered evaluation of evidence during which the admitted evidence is utilized.

This thesis, apart from its introduction and summary, is divided into 4 chapters.

Chapter I comprises the introductory issues relating to the notion of “evidence” and its types in civil proceedings. The chapter deals extensively with the complex question of the evidence limitations which have significant impact on the characteristics of unlawful evidence. Moreover, an overview of the stages of evidence proceeding including the stage of obtaining evidence is presented.

Chapter II concerns the Polish academic contributions and the opinions of Polish judiciary regarding the issue of unlawful evidence. Because the question of unlawful evidence has a visible connection to the right of access to a court and right to privacy, the character of this chapter made it necessary to refer to the views of the ECtHR regarding the right to a fair trial and the protection of privacy in terms of the admissibility of unlawful evidence. Furthermore, this chapter includes comparative law remarks which regard defining unlawful evidence in the selected legal orders within the systems of continental law and common law. The major part of the comparative law aspect concerns German law because of its similarity to Polish law and the lack of regulation of the issue of unlawful evidence.

Chapter III presents, firstly, the normative basis for unlawful evidence. Then, an extensive analysis of this notion was conducted, with regards to the conflicts with constitutional norms and specific substantive law norms, procedural law norms and good morals. In the last part of the chapter an attempt to define and characterize the notion of unlawful evidence was made.

Chapter IV comprises the question of admissibility of unlawful evidence which is presented in the light of the purpose of the civil proceedings, the right to a fair trial and selected procedural principles. This way of formulating the question of admitting unlawful evidence emphasizes the problem of conflict between the right to evidence and the broadly

defined right to privacy as well as the protection of human dignity. The remaining part of the chapter focuses on the issue of conflicts between principles of law, the theoretical legal methods to resolve these conflicts and the significance of the principle of proportionality in resolving the conflicts between the legal principles which allowed to select a method for the issue of admissibility of unlawful evidence and capture the limits of its admissibility in civil court proceeding.

A decision of a court concerning evidence which was obtained contrary to the law is implicated in weighting the constitutional values such as: the right to evidence, the protection of dignity or broadly defined right to privacy and the procedural values (pursuit of truth, loyalty, procedural fairness). A method which allows the court to make a decision on dismissing or admitting evidence, including the evidence obtained contrary to the law, is the principle of proportionality which in general terms assumes the proportionality of the means undertaken to the pursued goal.

Dividing unlawful evidence into admissible and inadmissible in civil proceedings is based on the level of protection of human dignity. The highest level of protection is provided by the constitutional norms which directly refer to dignity; weaker protection is provided by the norms which provide for a broadly defined right to privacy. Obtaining evidence through actions which directly violate human dignity justifies the inadmissibility of evidence which was procured in such way.