

EXCLUSION OF ILLEGALLY OBTAINED EVIDENCE IN GREEK CIVIL AND PENAL PROCEEDING - AN OUTLINE

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I dedicate this contribution to my friend Peter Gottwald with enormous admiration for his research and writing achievements which have made him so well known around the globe. I am incredibly fortunate to have such an eminent legal authority and exceptional human being enfold me with his trust and friendship.

I. Legal Framework

The legal rules in Greece restraining persons from obtaining evidence in breach of fundamental rights, such as physical and moral integrity, privacy, etc., are derived from the Constitutional provisions (under 1.1), from International Conventions (under 1.2) and from other statutory provisions (under 1.3).

1. Constitutional provisions

The Constitution is the cornerstone of the Greek legal system.¹ The present Constitution of Greece entered into force in 1975, immediately after the fall of the military junta². The experience of the dictatorship facilitated the implementation of some modern provisions of protective fundamental rights and privacy. The Constitution contains a detailed catalogue of Human Rights. Among them, emphasis must be given to the

¹ So *Yessiou-Faltsi*, Civil Procedure in Hellas (1995), p 12.

² *Dagtoglou*, Constitutional and Administrative Law, in *Kerameus/Kozyris*, Introduction to Greek Law (2008), pp. 23-24.

provisions of Art. 2, Par. 13, Art. 5, Par. 14, Art. 6, Par. 15, Art. 7, Par.26, Art. 9, Par. 17 and Art. 198.

The Constitution of 1975 was first amended in 1986, then again very extensively⁹ in 2001 and recently - to a smaller extent - in 2008. The second Amendment "...has probably been the worst Amendment in Greece's constitutional history"¹⁰. It is, nevertheless, of great importance as far as our issue is concerned. In 2001, the rights of access to information (Art. 5A)¹¹ and the right of protection of personal data (Art. 9A)¹² were added to the Constitution.

2. International Conventions

International human rights instruments are implemented in the Greek civil and criminal procedure systems. Art. 28 of the Constitution establishes that "The generally recognized rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law The rules of international law and of international

³ "Respect for and protections of human dignity constitute the primary obligation of the State".

⁴ "Each person is entitled to develop his personality freely and participate in the social, economic, and political life of the country, provided that he does not encroach upon the rights of others, the Constitution, or bona mores".

⁵ "No person shall be arrested or imprisoned without a reasoned judicial warrant which must be served at the moment of arrest or detention pending trial, except when caught in the act of committing a crime".

⁶ "Torture and any kind of bodily ill-treatment, injury to health, or the use of psychological pressure or any other offence against human dignity are prohibited and shall be punished according to the law".

⁷ "No house searches shall be made except when and as the law directs, and always in the presence of representatives of the judicial authorities" See also Art 253 of the Greek Code of Criminal Procedure (PPC).

⁸ "The privacy of correspondence and any other form of communication is absolutely inviolable. The law shall determine the guarantees under which the judicial authority is released from the obligation to observe the abovementioned right, for reasons of national security or for the investigation of particularly serious crimes." See also Law 2225/1994, 2713/99, 2225/94. Art. 200A. PPC and 253A PPC (Organized criminality).

⁹ A total of seventy-nine articles of the Constitution was amended.

¹⁰ *Dagtoglou in: Kerameus /Kozyris*, Introduction to Greek Law (2008), p. 24.

¹¹ «Article 5A: "1. All persons are entitled to information, as specified by law Restrictions this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties".

2. All persons are entitled to participate in the Information Society. Facilitation of access to electronically handled information, as well as of the production, exchange and diffusion thereof constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19»

¹² Article 9A: "All persons have the right to be protected from the collection, processing and use, especially by electronic means, of their personal data, as specified by the law. The protection of personal data is ensured by an independent authority, which is established and operates specified by law".

conventions shall be applicable to aliens only under the condition of reciprocity.” Thus the generally accepted rules of the international law and the international treaties ratified by Greece take precedence over the national law¹³. The international statutes, following ratification in Greece, prevail over conflicting provisions of Greek law.

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4th November 1950 (ECHR) and its Protocols¹⁴ 115 , 216 , 317, 518, 619, 720, 821, 1122, 1323 and 1424 have been signed and ratified²⁵ . The right to liberty (Art.5 ECHR), the right to a fair trial (Art.6 ECHR) and the right to privacy (Art. 8 ECHR) exert a profound influence on both criminal and civil proceedings. The jurisdiction of the European Court of Human Rights and the right of individuals to petition the Court also recognized Greek Courts occasionally refer to the ECHR²⁶ and to the jurisprudence of the Court on the right of fair trial²⁷.

Greece has also signed and ratified the European Social Charter, which was adopted in 1961 and revised in 1996²⁸.

13 *Dagtolou*, (fn. 2), p 25 “ [they] ...rank between the Constitution and acts of parliament”

14 See Texts comments and case law in: *Naskou-Peraki*, International Mechanisms Protecting Human Rights (2010).

15 Law 2329/1953 and Legislative Decree 53/ 1974).

16 Legislative Decree 215/1974.

17 Signature 30/11/1965 Ratification 8/1/1974

18 Signature 28/11/1974 Ratification 8/1/1975.

19 Signature 2/5/1983 Ratification 8/9/1998.

20 Signature 22/11/1984 Ratification 29/10/1984

21 Signature 19/3/1985 Ratification 6/9/1989.

22 Signature 11/5/1994 Ratification 9/1/1997.

23 Signature 3/5/2002 Ratification 1/12/2005

24 Signature 13/5/2004 Ratification 5/8/2005.

25 Protocols 9, 10 and 12 are signed (6/9/1990, 29/4/1992, 4/11/2000 respectively) but not ratified.

26 See Areopag 981/2009 (NOMOS), Areopag 560/2010 (NOMOS), with reference to Art. 8 ECHR (Areopag is the supreme Greek Court for Civil and Penal cases). Multi-member Court of Athens 4370/2011, *Elliniki Dikaiosisini* 2013, 789-796 (795), Penal Court of first instance of Samos 634/2012. *Armenopoulos* 2013, 116-120, (119)

27 In the case of *Khan vs. the United Kingdom* (2001) 31 EH.RR 1016, ECHR, the Court decided that per se the admission of illegally - through violation of ECHR rights - obtained evidence does not infringe the right to a fair trial For a Greek view of the problem see: *Kaifa- Gbandi*. *Modella epitirisis sto kratos asphalias kai poiniki diki* (2010), p 59 fn.176. See also, *Satlani*, *Skepseis pros aposafinisi tou epitreptou i mi tis aksiopiisis tis magnitotainias i tis videotainias os apodeiktikou mesou*, *Poiniki Dikaiosisini* 2012, pp. 626-639.

28 Signature 18/10/1961. Ratification 06/06/1984 - of the 1961 Charter -by Law 1426/1984. Only Signature of the Revised European Social Charter on 3/5/1996.

The International Covenant on Civil and Political Rights²⁹, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁰, the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment of 26/11/1987³¹ and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg 1981)³² have also been ratified. Greece is a full member³³ of the European Communities since 1981. The Treaty of Lisbon amended the Treaty on the European Union and the Treaty establishing the European Community³⁴. According to An. 6.1: “The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in the general provisions in Title VII of the Charter in accordance with governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

3. Other statutory provisions

a) EU-Directive 95/46/EU is implemented in Greece by Law 2472/1997 on the Protection of Individuals with regard to the Processing of Personal Data, which has already been modified by Laws 2663/1998, 2703/1999, 2721/1999, 2819/ 2000, 2915/2001 and 3471 /2006. Law 2472/1997 provides, in articles 21-23. Administrative and penal sanctions as well as

²⁹ Law 2462/1997.

³⁰ Law 1782/1988.

³¹ Law 1949/1991, Article 1: “There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Committee”) The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment Article 2. Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority. Article 3. In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other.”

³² Law 2068/1992.

³³ *Christianos*, Application of Community Law in Greece in: *Kerameus/Kozynis*. Introduction to Greek Law (2008), p 65.

³⁴ (2007/C 306/01). Law 3671/2008.

the civil liability of persons who unlawfully “process” personal data. As mentioned above, not only is the right of privacy constitutionally protected but also the right to the protection of personal data has been guaranteed by the Constitution (Art. 9A) in Greece since 2001.

- b) The Greek Penal Code (PC) includes provisions which criminalize³⁵:
- c) The violation of secrecy of letters (Art. 370 PC).
- d) The tapping and recording of telephone calls (Art. 370A, Par. 1 PC). This is an important provision which has been incorporated into the Penal Code in order to give more effective protection of human rights³⁶.
- e) The eavesdropping on, and recording of, private conversations (Art. 370A, Par. 2 PC)³⁷.
- f) The use of information from a sound or video recording obtained through the violation of Par. 1 and 2 of Art. 370A (Par. 3). According to Par. 4 of Art. 370A. which is now derogated³⁸, the crime under Par. 3 was not punishable if the evidence was brought before the Court in order to protect legitimate interests which could not be protected by other means³⁹.
- g) The unlawful copying, use or disclosure to third persons of computer data or software constituting state, scientific, professional or trade secrets of the private or public sector (Art. 370B PC)⁴⁰.
- h) The unauthorized copying and use of computer software (Art. 370C PC).
- i) The violation of professional secrecy (Art. 371 PC).
- j) Unlawful opening of sealed letter by employees of state post offices (Art. 248 PC)

³⁵ *Anagnostopoulos/Magliveras*, Criminal Law in Greece (2000), p 193.

³⁶ See Areopag 928/2010 (NOMOS) and the Legal Opinion of the Public Prosecutor of the Areopag, No. 4/2008. See also, Porismatiki Ekthesi 16.9 2009 tou Eisigiti Areopagiti Athanasiou Koutroumanou, Poiniki Dikaosini 2011, 178 and DiatEisEF Peir. 110/2009, Poiniki Dikaosini 2011, 328.

³⁷ Modified by Art. 33 Par. 7 of Law 2172/1993 and by Art 8 Par. 6 of Law 3090/2002.

³⁸ Art. 10 Par. 1 Law 3674/2008. See *Symeonidou-Kastanidou*, I tropopoiisi tou arthrou 370A me to nomo 3674/2008, in: *Paraviassi tis Idiotikotnas. Oi kameres* (2009), pp. 9-36. *Kalfelis*, *Paraviassi tis idiotikotitas kai kameres*, in: *Paraviassi tis idiotikotitas. Oi kameres* (2009), pp. 37- videotainias os apo-deiktikou mesou, Poiniki Dikaoidini 2012, pp. 626-639.

³⁹ See Areopag 53/2010 (NOMOS), NoB 2011, 122=Poinika Xronika 2011, 25.

⁴⁰ Art. 370B and 370C are introduced in Penal Code by Art. 3 and Art. 4 of Law 1805/1988. See *Manoledakis*, pp. i poiniki prostasia tis idiotikotitas, Poiniki Dikaosini 2008, s pp. 334 if... *Kaiafa-Gbandi*, I poiniki antimetopisi ton epitheseon kata ton sistimaton pliroforion sto plaisio tis E.E kai i anamenomeni epidrasi tis stin elliniki ennomi taxi, Poinika Xronika 2011, p. 489.

k) In Art. 18741, 187A, 187B42 and 188, the Penal Code penalizes organized crime⁴³. Action subject to penalty is the accord between two or more persons to commit serious offences, given in Art. 187, as a group. According to Art. 253A44 of the Code of Criminal Procedure, given specific legal requirements (253A Par 2), several means of investigation (e.g., undercover agents) are foreseen under Art. 253A, Par. 1, in order to combat the criminal acts of the organization. The results of such investigations and the knowledge gained through such investigations can be used only for the reasons determined by the Judicial Council. Exceptionally, the evidence, or the knowledge obtained, can be used, provided the Judicial Council passes a specific decision in this regard (Art. 253 Par 4. PPC), in order to furnish proof of a crime, to arrest perpetrators, and to dismantle another criminal organization.

l) The **Greek Code of Civil Procedure** (CCP) also erects barriers to the search for truth in certain exceptional situations, giving priority to other legal interests⁴⁵, e.g. Art. 393, 394, 399, 400, 401, 402, 450 Par. 246.

II. Admissibility

Does the fact that the evidence was obtained unlawfully make the evidence generally inadmissible in criminal or civil proceedings or does this fact have no consequence for the use of evidence obtained in an unlawful way? This question has not been answered in a uniform manner in the Greek

41 Law 2928/2001 added Article 187A to the Penal Code, which was then, renumbered as Article 187D by the Law 3251/2004 which also introduced a different Article 187A.

42 Article 187 of the Penal Code was recently amended by Article 20 of the Law 3849/2010, 3875/2010, Article 8 of the Law 4042/2012, Article 12 of the Law 4049/2012 and Article 320 § 9a and 9b of the Law 4072/2012.

43 See *Symeonidou-Kastanidou*, *Organomeno englima kai tromokratia*. 2nd Ed. (2007). *Dalacouras*, *Oi idikes anakritikes praxeis tou arthrou 6 tou nomou 2928/2001, Poinika Xonika 2001*, 1022. *Livos*, *Organomeno englima kai idikes anakritikes praxeis* (2007), *Tzannetis*, *i ennoia tis englimatikis organossis kata to neo arthro 187 Poin. Kod. Poinika Xronika 2001*, 1016, *Satlanis/ Margaritis*, *is it possible for a political party to be encountered as a criminal organisation? Poiniki Dikaiosiini 2013*, p. 761.

44 *Androulakis*, *Themeliodeis ennoies tis poinikis dikis*, 3rd ed (2007), p. 309. Article 253A of the Code of Criminal Procedure was recently amended with Article 4 of the Law 4198/ 2013.

45 See primarily *Yessiou - Faltsi*, *Civil Procedure in Hellas* (1995). pp. 332-336 *Maniotis/ Tsantinis*, *Civil Justice in Greece* (2010), pp. 49-50; *Kaissis*, *Die Verwertbarkeit materiell rechts widrig erlangter Beweismittel im Zivilprozess* (1978).

46 See *Kerameus*, *Judicial Organization and Civil Procedure*, in: *Kerameus /Kozynis*, *Introduction to Greek Law* (2008), p 359: "(...) there are no exclusionary rules of evidence in the American sense (...)".

legal system⁴⁷. Initially the position of the Greek jurisprudence was that courts did not have the power to exclude evidence merely because it was obtained by illegal means⁴⁸. Greek legal theory formerly also took the same position. However, in the last thirty years, the threats to the right of privacy brought about by modern technology have necessitated a reassessment of these old positions. In penal proceedings, the two main concurrent interests regarding the admissibility of illegally obtained evidence are, on the one hand, the necessity to discover, ex officio, the **objective truth**⁴⁹ - a duty of judges and prosecutors deriving principally from the rule of law (Art. 23, Par 150, Art. 25. Art. 96. Par.151, Art. 87,

⁴⁷ Literature: *Spynellis*, Beweisverbote nn griechischen Strafprozessrecht, ZfRV 1989, p. 39; *Kaissis*, Die Verwertbarkeit materiell rechtswidrig erlangter Beweismittel im Zivilprozess (1978); *Dalakouras*, Beweisverbote bezüglich der Achtung der Intimsphäre (1998); *Triantafyllou*, Truth or Due Process Exclusionary Rules in Greek Criminal Procedure Law, RHD1 63, p. 476-509. *Kaissis*, Paranoma apodiktika mesa - (1986); *liopoulos-Strangas*, The use of illegally obtained evidence and the right to defence - The evidentiary prohibition of article 19 paragraph 3 of the revised Greek Constitution (2003) (in Greek) *Kaifa-Gbandi*, Modella epitirisis sto kratos asfalias kai poiniki diki (2010); *Kaminis*, Illegally Obtained Evidence and Constitutional Guarantees of Human Rights (The Exclusion of Evidence in Criminal and Civil Proceedings), (1998) (in Greek). *Kaminis*, To problima ton paranomon apodiktikon meson stin poiniki diadikasia meta tin anatheorisi tou arthrou 19 tou syntagmatos; Timitikos tomos gia ton Gianni Manoledaki, Dimokratia - Elefteria - Asfalia, I, (2005), pp. 337-363; *Androulakis*, Themeliodeis ennoies tis poinikis dikis, 3rd. Ed (2007), pp. 199-220, 467-475; *Kalfelis*, MME kai krisi thesmon, Poiniki Dikaiosini 2005, p. 878; *Kalfelis*, Paravasi idiotikotitas kai kameres, Pomika Xronika 2008, p 865; *Tnantafyllou*, Apodiktikes apagoreyseis kai archi tis analogikotitas, Poinika Xronika 2007, pp. 295; *Giannopoulos*, Kampoies skepseis schetika me to famomeno tis chrisis paranomos apoktithisson magnitoteniou se tileoptikes ekpompes, Poiniki Dikaiosini 2005, p. 220; *Dalakouras*, Poiniki Dikonomia, B, 120, 128; *Dalakouras*, Apagorevmena apodiktika, mesa Poinika Xronika 1996, p. 321; *Dimitratou*, Peri ton apodiktikon apagorevseon stin poiniki diki (1992); *Dimitratou*, i eksesixi tou thesmou ton apodiktikon apagorevseon, Pomika Xronika 2001, p. 5, *Karras*, Poiniko Dikonomiko Dikaio, 3rd. Ed 2006, p. 742, *Margaritis*, Poiniki diadikasia kai apodeiktika mesa athemitos ktithenda m Meletes gia emvanthyssi stin poiniki dikonomia (1990), p 130; *Margaritis*, i dikonomikou periechomenou diataxeis tou nomou 2408/1996. Yperaspissi 1997, p. 517, Tsnis. 7 he constitutional protection of the right of correspondence privacy (in Greek) (2002). *Papadatnakis*, Poiniki Dikonomia (2004), *Satlani*, Skepseis pros aposafimsi tou epitreptou i mi tis aksiopnsis tis magnitotainias i tis videotainias os apodeiktikou mesou, Poiniki Dikaiosini 2012, pp. 626-639.

⁴⁸ See the old decision of the Areopag 761/1973. Poinika Xronika 1973, 806 (admissibility of a statement of the defendant obtained by violence against him). This is a ruling made before the adoption of the present Greek Constitution. See also Areopag 1 150/1989, 783/2001, 71/ 2007, 316/2007.

⁴⁹ See *Spynellis*, Beweisverbote nn griechischen Strafprozessrecht. ZfRV 1989, p. 39 In Greek Civil Procedure Law the terms used are “presumed” or “formal” truth. See *Kaissis*. Die Verwertbarkeit materiell rechtswidrig erlangter Beweismittel im Zivilprozess (1978), pp. 15-23.

⁵⁰ Art. 23. Par. 1: “The State shall adopt due measures safeguarding the freedom to unionise and the unhindered exercise of related rights against any infringement thereon within the limits of the law”

⁵¹ Art. 96, Par. 1: “The punishment of crimes and all of the measures provided by criminal laws, belong to the jurisdiction of regular criminal courts”.

Par. 152 of the Greek Constitution) and from some legal provisions of the Greek Code of Criminal Procedure (An. 177, Art. 178, Art. 179, Art. 239. Par. 2, Art. 327, Art. 351 Par. 2, Art. 352. Art. 353) - and, on the other hand, the rights of the person as an individual and as a member of the society, rights which are, according to Art. 25, Par.1 of the Greek Constitution, guaranteed by the State⁵³.

1.

The Greek **criminal justice system** is basically investigatory with strong adversarial elements⁵⁴. Under the statutory regulations, the Code of Criminal Procedure plays significant role. It stipulates a series of procedural provisions which erect barriers to the search for truth giving priority to other legal interests, such as, for example, professional secrecy. Instances of such provisions include Articles 192⁵⁵, 218, Par. 1⁵⁶, 212⁵⁷, 364, 365⁵⁸ and 358 CCP. Their violation empowers the court to exclude the evidence through the legal instrument of absolute or relative nullities of the proceedings. They are regulated in Art. 171 and 170 of the Code of Criminal Procedure respectively. Nullities occur only in cases explicitly foreseen by the law (Art. 170, Par. 1). An absolute nullity and a relative nullity in the trial stage which is not remedied lead to the nullity of the whole proceeding or of the concrete procedural act and to the reversal of the judgment (Art. 510, Par. 1A and IB CCP). Through the nullities instrument, the Greek Code Criminal Procedure enables the exclusion of evidence obtained through specific procedural irregularities concerning procedural rights or formalities with regard to the production of evidence⁵⁹.

2. *There is also an explicit legal basis for the exclusion of evidence.*⁶⁰

52 Art 87, Par. 1: "Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence.

53 Art. 25, Par. 1: "All agents of the state are obliged to ensure the unhindered and effective exercise thereof"

54 *Spinellis*, Criminal Law and Procedure, in: Kerameus/Kozynis, Introduction to Greek Law (2008), p. 475.

55 Absences of Notification regarding the appointment of a forensic expert for the absolute nullity see a trio Pagos, Poinika Xronika 2004, p 223.

56 Testimony under oath.

57 Professional secret of the witness See *Kaiafa-Gbandi*, Montella epitirtsis sto kratos asfalias kai poiniki diki (2010), pp. 88-91

58 Pursuant to Art. 364 and 365 CCP all documents must be read out aloud. The prosecutor and the parties may comment on to Greek Law (2008). p. 481 Triantafyllou. RHDH 63, p. 482.

59 See in detail *Triantafyllou*, RHDH 63, pp. 481-483

60 In 1991 an exclusionary rule for illegally obtained tape recordings and video recordings was statutorily introduced for both penal and civil proceedings (Art. 31, Par. 2 and 3 of the Law 1941/1991) this rule was abolished some time later by Art 370A PC.

Regarding criminal proceedings. Art. 177 CCP is of special significance. Art. 177, Par.2 of the Code of Criminal Procedure, as amended by Art. 2, Par. 7 of the Law 2408/9661 and by Art. 10, Par. 2 of the Law 3674/2008, introduce the exclusion of evidence which has been obtained by or through criminal acts to criminal proceedings. This is an effective exclusionary rule. Until 2008, the wording of Art. 177, Par. 2, was broader allowing such evidence to be admitted in exceptional cases of the criminal offence in question was punishable by a life sentence and if special reasons justified its admissibility. Illegally obtained evidence was also admissible in order to prove defendants' innocence⁶². Although the version in force (of Art. 177, Par. 2) is now more rigid, providing no exceptions to the exclusionary rule, the Greek jurisprudence does not hesitate, in certain cases, to admit evidence obtained by or through criminal acts⁶³. An instance of this would be the case when an unlawfully obtained sound recording leads to the proof of the innocence of the defendant⁶⁴.

3.

Until 2001, **the Constitution** did not contain rules providing for the exclusion of illegally obtained evidence. The 2001 Amendment introduced a new paragraph to Art. 19 which established that "Use of evidence acquired in violation of the present article and of articles 9 and 9A is prohibited." The significance of Art 19, Par 3, is evident: the Greek Constitution⁶⁵ establishes a *prima facie* absolute exclusionary rule of superior rank, according to which evidence obtained in violation of the abovementioned constitutional rights, is inadmissible in **criminal and civil** proceedings. The exclusionary rule mainly concerns evidence obtained by unlawful use of modern electronic devices. With reference to Art. 25. Par. 1, pursuant to which the rights of a man as an individual and as a member of the society are guaranteed by the State, applying also to the relations between private parties, violation of the constitutionally protected rights of Art 9, 9A and

61 See *Margaritis*. Oi dikonomikou dikaioi diataxeis tou nomou 2408/96, *Yperaspissi* 1997, 517.

62 Mikto Orkoto Efeteio Athinon 213/2003 (NOMOS) = Armenopoulos 2003, 1008 = Archio Nomologias 2003, 758 = Poinikos Logos 2003. 383 - NoB 2003, 1491 See, review concerning the Amendment of Art 177 §2 Code Of Criminal Procedure and the repeal of §4 of the same Article in Salient. *Skepseis pros aposafnisi tou epitreptou i mi tis aksiopiisis tis magnitotainias i tis videotainias os apodeiktikou mesou*. Poiniki Dikaiosi 2012, pp 626-639, (628).

63 Areopag 711/2011, Poiniki Dikaiosi 2012, 518, Areopag 1323/2(111 (NOMOS) = Piraiki Nomologia 2011, 419. Plimmeliodikio Samou 634/2012 (NOMOS) = Armenopoulos 2013, 116.

64 Compare Areopag. 53/2010 (NOMOS). NoB 2011, 122 - Ponika Xronika 2011, 25.

65 This is - especially in Europe - unusual but not unique. See analogous regulations in the Constitutions of Portugal, Turkey, and of the Federative Republic of Brazil (Title II. Capital 1. Art. 5, LYT ' Illegally obtained evidence is inadmissible').

19 of the Greek Constitution has as a consequence the inadmissibility of the evidence before **criminal civil and all other Greek Courts**, not only in cases in which the evidence was obtained by the State but **also when the evidence was obtained by a private party**⁶⁶.

a) This exclusionary rule attracted criticism by the Greek legal doctrine. While a part of the constitutional doctrine, especially in the period immediately after the Amendment, was based on the precise wording of the Constitution - strongly voting for the **absolute character** of the exclusionary rule and accepting no exceptions⁶⁷ - recent interpretations of Art 19, Par. 3, depart from this understanding and advocate the exceptional admissibility of evidence **which proves the innocence or improves the position of the accused**⁶⁸, **especially in cases of particularly serious offences**⁶⁹.

b) These concerns about the **absolute character** of the exclusionary rule are shared also by the courts in practice, as witnessed by their exceptional acceptance of illegally obtained evidence in order to protect constitutionally superior objects, such as a human life⁷⁰.

c) Arguments such as the principle of proportionality⁷¹, the principle of practical concordance as a method of interpretation⁷² of Art 20, Par.

66 See *Kaminis*, To problima ton paranomon apodiktikon meson stin poiniki diadikasia meta tin anatheorisi tou arthrou 19 tou svntagmatos. Timitikos tomos gia ton Gianni Manoledaki. Dimokratia - Eleftheria - Asfalía. I, (2005). pp 337 (340); *Kaiafa-Gbandi*, Montella epitirisis sto kratós asialias kai poiniki diki (2010), pp 24, 28, 31, 33-34 (for evidence obtained by unlawful surveillance).

67 See *Venizelos*, To anatheoritiko kektimeno (2002), p 148; Chryssogonos, Mia bebaiotiki anatheorisi (2000) and Chryssogonos. Atomika kai koinonika dikaiomata (2002), p 245 In favour of the absolute character of Art 19, Par. 3 with no exceptions in civil proceedings Xikas, Politiki Dikonomia 1J (2005), p. 416.

68 *Kaiafa-Ghandi*, Montella epitirisis sto kratós asfalías kai poiniki diki (2010), pp 14-15, 17- 18, 24. Areopag 12/2004 (NOMOS).

69 See *Iliopoulos-Strangas*, fn 47. pp 101-107 Areopag 1537/2007 (NOMOS).

70 See Areopag 996/2010 (NOMOS), Areopag 981/2009, Efimerida Astikou Dikaiou 1372 = Epitheorisi Politikis Dikonomias 2009, 684= Xronika Idiotikou Dikaiou 2010 Plenum of the Areopag 1/2001, Appeal Court of Thessaloniki 742/2012 (NOMOS), A Court of Thessaloniki 3368/2012 (NOMOS), Penal Court of first instance of Samos 634 (NOMOS) = Armenopoulos 2013, 116 (NOMOS).

71 *Orfanoudakis*, I archi tis analogikotitas stin ellniki ennomi taxi (2003), p. 158; *Triantafyllou*, Apodiktikes apagorevseis kai archi tis analogikotitas, Poinika Xronika 2007, p. 297 See also *Iliopoulos-Strangas*, fn. 47, pp. 93 and 107 and *Kaiafa-Gbandi*, Montella epinrasis sto k asfahas kai poiniki diki (2010), p. 17, Areopag 611/2006 (NOMOS). Opinion of the Pi Prosecutor of the Areopag 15/2(111, Poiniki Dikaiosini 2011, 1299 = Poinika Xronika 2 68 = NoB 2012, 703.

72 See *Iliopoulos-Strangas*, The use of illegally obtained evidence and the right to defense - The evidentiary prohibition of Article 19, Paragraph 3 of the revised Cheek Constitution Greek (2003), pp. 95-96.

173 and Art. 19. Par.3, **the priority of human dignity⁷⁴ and especially the character of Art. 2, Par. 1, of the Constitution, which cannot be amended⁷⁵**, dominate the scientific discourse about this controversial issue. From the exceptional character of the admissibility it is derived that the evidence must be the sole⁷⁶, necessary and adequate means to prove the innocence or generally to assist in the defense of the accused⁷⁷.

d) According to a well-established opinion in the constitutional doctrine, the exclusionary rule of Art 19, Par. 3, encompasses not only the constitutional rights which are mentioned in its wording but also evidence obtained by violation of other constitutional rights, not included in Art. 19, Par.3⁷⁸.

4.

Evidence obtained in violation of the terms of the Law 2472/1974 on the Protection of Individuals with regard to the Processing of Personal Data is inadmissible according to Art. 19, Par. 3, of the Constitution and Art. 177, Par. 2, of the Code of Criminal Procedure⁷⁹.

5.

The provision of Art. 14, Par. 2. of the Covenant on Civil and Political

73 Article 20.1: "Every person shall be entitled to receive legal protection by the courts may plead before them his views concerning his rights or interests, as specified by law. 20.2: The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of his rights or interests."

74 *Kassimatis*, NoB 1999, pp. 705-727 (711); *Kassimatis/Mavrias*,- *Ermineia tou Syntagmatos*, Tomos 13, (1999), Art 20. No 35.

75 *Iliopoulos-Strangas*, fn. 47, 100/101. 107.

76 *Areopag* 42/2004 (NOMOS).

77 *Iliopoulos-Strangas*, fn 47, 102, 104.

78 *Iliopoulos-Strangas*, fn. 47. 107 with reference to the exclusion of evidence obtained by torture. For exclusion - after balancing of concurring interests - see: *Dalacouras*, *Poinika Xronika*, 1966, p. 337; *Kaissis*, *Prosopika dedomena kai apodeiktikes apagorevseis* in: *Afieroma sti kathigitria P. Yessiou-Faltsi* (2006), 75-99. Within the framework of the "theory of the balancing of interests" a dominant position is taken by the principle of proportionality, which is established in the Greek Constitution (Art 25, Par.1) See in detail *Triantafyllou*, *Apodiktikes apagorevseis kai archi tis analogikotitas*, *Poinika Xronika* 2007, pp 295-310, (297-299).

79 For the problem in penal proceedings see extensively *Kaiafa-Gbandi*, *Montella epitirisis sto kratos asfalias kai poiniki diki* (2010); *Kokkinakis*, *Prostasia dedomenon prosopikou charaktira kai dikonomikes apagorevseis stin poiniki diki*, *Poinika Xronika* 2000, p 765; *Nouskalis*. *Piniki prostasia prosopikon dedomenon* (2005). For the problem in civil proceedings see *Kaissis*, *Prosopika dedomena kai apodeiktikes apagorevseis* in: *Afieroma stin kathigitria P. Yessiou-Faltsi* (2006), pp. 75-99; *Nikas*. *Politiki Dikonomia II* (2005). 417 See also the Legal Opinion of the Public Prosecutor of the Areopag No. 9/2009 and *Mantzoufas*; *Prostassia prossopikon dedomenon kai dimossia asphalia. Oi stathimsseis tis Archis Prostassias Dedomenon Prossopikou stis apophaseis gia tin chrissi kameron klistou kiklomatou se ipethnous chorous*, in: *Kampsidou* i *Ilektrini parakolouthissi se ipethrious chorous* (2008), pp 39-40 and *Satlani* , *Skepsis pros aposafiniisi tou epitreptou i mi tis aksiopiisis tis magnitotainias i tis videotainias os apodeiktikou mesou*, *Poiniki Dikaiosi* 2012. pp 626-639.