

The Issue of Excluding Unlawful Evidence from Inquiry Files in Turkish Criminal Judiciary Law

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Introduction

The issue of "unlawful evidence" came to the agenda on Turkish Criminal Judiciary Law, particularly with Section 24 of Act No. 3842 dated 18.11.1992 and an additional rule to the Criminal Trials Procedural Act, and resulted in a lot of debates¹. Under this additional rule, "*evidence obtained by unlawful means conducted by investigation and inquiry authorities cannot be used as a basis for a ruling.*" Thus, "the necessity for resting upon lawful evidence in criminal inquires", which essentially had previously existed in Turkish Criminal Judiciary Law but was put in a written form as a result of problems in practice, gained importance, and brought some problems with it. In referring to it would be impossible to rest upon unlawful evidence, no matter how clearly the evidence shows the commitment or the possibility of the commitment of a criminal act by the suspect, such evidence of this nature would not be used and even not considered in the Turkish Criminal Judiciary, which has chosen the principle of "state of law". This is the basis which brought all the debates with it. For example, in some doctrines it is

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¹ For detailed information see Füsün Sokullu Akıncı, "Recent Attempts to Guarantee Human Rights in the Turkish Penal Procedure Law", *Annales de la Faculté de Droit d'Istanbul*, XXXII/NO. 48, Istanbul, 1998, pp. 253-269.

possible to see opinions allowing to use some evidence obtained through some minor breaches of law, or through breaches of law that would not violate basic rights and freedom of the individual provided under the Constitution². Such a distinction was made by Bıçak in his focus on the treatment of evidence in the Turkish and English criminal judiciaries by referring to the notions “illegality” and “unlawfulness”, and stresses that as far as unlawfulness in the context Section 254/2 is concerned such a distinction is restricted to technical legality in practice³. As I will briefly explain below, it is neither appropriate nor acceptable, in legal terms, to distinguish unlawful evidence on the bases of being important or unimportant, big or small, violating rights or not violating rights, and henceforth to ignore the breach of law by using some abstract criteria.

The subject matter that I will look into in this attempt will be whether or not “unlawful evidence could be excluded from the inquiry file” after the edition of a rule as the 2nd subsection to Section 254 of the Criminal Trials Procedural Act, and as a result of the addition of the rule to the 5th subsection of Article 38 of the 1982 Constitution on 03.10.2001 by Section 15 of Act No. 4709, which serves as a Constitutional base. Under the new rule added to the 5th subsection of Article 38 of the Constitution, “*evidence obtained unlawfully cannot be accepted*”. In this work, firstly, the general situation of unlawful evidence in Turkish Criminal Judiciary Law will be determined; then keeping unlawful evidence in the inquiry file will be evaluated in terms of criminal judiciary principles; and after that, I will discuss whether or not excluding unlawful evidence from the case file or even from the inquiry file is possible.

I- Determining the general situation of unlawful evidence in Turkish criminal judiciary law

It is not possible to find long debates and different views on this issue in Turkish Criminal Judiciary Law. This should not be expected to

² See Ersan Şen, *Türk Ceza Yargılaması Hukuku'nda Hukuka Aykırı Deliller Sorunu* (The Question of Unlawful Evidence in Turkish Judiciary Law), İstanbul, 1998, p. 96 and its continuation.

³ See Vahit Bıçak, *Improperly Obtained Evidence*, Ankara, 1996, Yardımcı Yayın, pp. 110-112.

happen either, because the rules enacted within the criminal judiciary area on evidence obtained unlawfully during the initial and final inquiry stages and further evidence obtained by using such unlawful evidence are very definite. As a result of such definite rules, which will be discussed briefly, it is no longer possible to rest upon unlawful evidence and further evidence obtained from it; to use it in a judicial process; and to consider it.

Resting upon evidence decided to be unlawful and considering it one way or another in Turkish Criminal Judiciary Law are completely prevented by the addition of Sections 135/a and 254/II to the Criminal Trials Procedural Act on 18.11.1992 by Act No. 3842 first, and then, by the addition of the rule to the Subsection V of Article 38 of the 1982 Constitution on 03.10.2001 by Section 15 of Act 4709. Under Section 135/a of the Criminal Trials Procedural Act, *"the evidence of a person or the statement of the suspect must be based upon his free will. This cannot be prevented by physical or mental interventions that may spoil free will such as harassment, torture, giving medicine by force, tiring, cheating, deceiving, using force and violence, and using devices. No illegal promises can be made. Evidence obtained by illegal means outlined in the above subsections, even if agreed by the suspect, cannot be considered as evidence."*⁴ Again, under Section 254/II of the Criminal Trials Procedural Act, *"Evidence obtained unlawfully by investigation and inquiry authorities cannot provide a ground for a judgement."* Apart from these, Under amended Article 38 of the 1982 Constitution, which is the provisional basis for both Turkish Criminal Judiciary Law and other areas of law, *"Any clue or item that is obtained unlawfully cannot be accepted as evidence."* The ruling I mentioned and embedded in the Constitution along with the Criminal Trials Procedural Act is so clear that it points out that evidence confirmed to be unlawful cannot be accepted, moreover the concept "evidence" was not even used. Instead, the expression "clue or item obtained unlawfully" was used, and it was clearly stated they could not be used as evidence. In other words, the 1982 Constitution which is the highest regulatory and judicial authority, has already determined that such clues or items could not constitute the

⁴ For detailed information see Timur Demirbaş, *Sanığın Hazırlık Soruşturmasında İfadesinin Alınması*, İzmir, 1996, Adalet Matbaacılık, p. 248 and its continuation-Cumhur Şahin, *Sanığın Kolluk Tarafından Sorgulanması*, Ankara, 1994, Yetkin Yayınları, p. 189 and its continuation.

quality of evidence and could not be accepted as evidence in the judicial process. It does not even use the expression "evidence" when referring to such.

Given the explanations and rules stated above, only the evidence that is obtained within the boundaries of procedures without violating legal principles can be accepted and considered in the judicial process. In fact, this is necessitated by the state of law principle and the right to genuine judicial process under this principle. Therefore, it is not possible to accept unlawful evidence to be used in the judicial process and to approve of such an idea as being "consistent with law". As the term implies, "unlawfulness" means being inconsistent with law and breaching the principles and procedures set out by law. There is nothing to defend about using evidence obtained by unlawful act which is based on some unacceptable subjective criteria such as unimportant breach of law or minor breach of law or breach of law that does not violate the suspect's rights. Furthermore there is also nothing to defend about using evidence determined to be unlawful in the judicial process as if it were consistent with law for any purpose like "prevalence of justice".

An unlawful act or evidence is indisputably unlawful, and the person who performs such an act and the evidence he obtained should be treated according to whatever treatment is appropriate for this sort of act and behaviour. This treatment will be not to use or provide a place for the unlawful evidence in the judicial process that runs in consistent with law right from the beginning to the end. The aim here is not to protect or defend the suspect, rather it is to act and follow the rules and procedures set out by the criminal judiciary norms foreseen in a proper legal system⁵. What is expected of a criminal judge is to inquire whether or not alleged unlawful evidence has been obtained unlawfully, and if it has, to exclude it from the judicial process.

On the point whether or not evidence based upon an unlawfully obtained clue or item (evidence) could be used in a judicial process, I hold the same view. In other words evidence obtained in such a manner

⁵ Ersan Şen, *ibid.* p. 138.

should also be regarded as unlawful⁶. Whatever the exclusion of such evidence is called, whether it is called "indirect affect of unlawful evidence" or "the fruit of the poisonous tree", it does not really matter, because what is important is the lawfulness of the means and basis of how the evidence is obtained. If the means of obtaining evidence is not consistent with law and the basis of that evidence is rotten, it would be wrong to try to consider it in a judicial process for any reason. For example, once decided that a suspect's statement is obtained through illegal means, it would not be possible to talk about lawfulness of any evidence arising from his statement. Thus, the main purpose of law is not to reach the truth and find a defendant. It is to prevent unlawful practice, to ensure lawfulness and to achieve justice within the boundaries of law. Therefore, it is necessary to maintain and not diverge from this purpose in considering the issue "evidence".

II- Determining whether or not including unlawful evidence in the inquiry file violates the state of law principle, the defendant's rights, the presumption of innocence and the right to genuine judicial process

It is indisputable that keeping evidence which is determined to be unlawful means that such items, which do not constitute the quality of evidence, could influence the judicial authority or could be, somehow, considered in the legal process. Carrying on with such a practice, in other words, putting unlawful evidence in the case file and refusing to remove it is contrary to the clear and definite rule of the Constitution discussed above, and therefore, to the "state of law" principle stated in Article 2 of the Constitution. Ignoring this principle in a situation where the "state of law" principle is chosen as a legal base is absolutely unacceptable, particularly when considering that Article 38 of the 1982 Constitution includes the clear ruling, "Items or clues obtained unlawfully cannot be accepted as evidence", and based on this ruling, the Criminal Trials Procedural Act includes Section 135/a and 254/II, which was mentioned above. The "state of law" principle, by its nature, necessitates judicial institutions that make up the judiciary power of the state to behave as set

⁶ See Serap Keskin, *Ceza Muhakemesi Hukukunda Temyiz Nedeni Olarak Hukuka Aykırılık*, İstanbul, 1997, Alfa Yayın, pp. 182-183-Timur Demirbaş, *ibid.* pp. 298-305-Cumhur Şahin, *ibid.* pp. 229-233-Ersan Şen, *ibid.* p. 159.

out by the principles of law. Since it is no longer possible to use evidence which is decided to be unlawful, the judicial authority is the very first institution to know and to declare that it would not use such evidence. An effort of this authority to keep such illegal evidence in the file in contrary to what is expected of it, inevitably, will bring an important legal defect to the agenda. By keeping unlawful evidence in the file, the judicial authority will always keep itself in a situation of being influenced, will always be subject to allegations based upon unlawful evidence, and will always be under threat of direct or indirect influence. What is expected of the judicial authority within the "state of law" principle, which is the basis of Turkish Criminal Judiciary Law that has chosen the common-sense system of evidence, is to reach a fair jurisdiction after a lawful judicial process.

Keeping unlawful evidence in the file is harmful to the presumption of innocence, and as result, to the right to a genuine judicial process. The presumption of innocence means that the person is presumed to be innocent and should be treated as an innocent person unless found guilty by a court of law. Therefore, arriving at a conclusion that would violate the presumption of innocence by being influenced by unlawful evidence will bring a serious legal defect to the agenda in the area of criminal judiciary. The presumption of innocence is maintained all the way up to the stage of absolute conviction. Therefore, tolerating violation of law and unlawful evidence for the purpose of charging the suspect to convict him beforehand means no more than a total ignorance of the presumption of innocence principle.

Keeping unlawful evidence in the file also violates the right to a genuine judicial process to a great extent, because the judicial process which the suspect has to go through takes place within the boundaries of the rules set out by law and the condition of exercising all his legal right must be available to the suspect. Again, the principle and right to a genuine judicial process also means that the judicial authority will accomplish its judicial practice and arrive at an objective conclusion within the rules and procedures of law without prejudice and expressing its opinion beforehand. I am of the view, at this point, that continuing on with the judicial process by knowing there is evidence alleged and proven to be unlawful and keeping it in the file knowingly, and trying to get a result by alleging that the evidence would not influence the matter

will considerably damage the right to a genuine judicial process. This principle and the others mentioned above, which are based upon Section 6 of the European Human Rights Convention and various rules (Sections 19, 36, 37, 38, etc.) of the 1982 Constitution, cannot definitely be ignored by a judicial process. Indeed, a legal course that would result in ignorance, the use of unlawful evidence, and its possible influence in the judicial process by being kept in the file despite a claim of not being used are totally unacceptable by law.

III- Views on the issue whether or not it is possible to remove unlawful evidence from the case file and even from the inquiry file

In the practice of Turkish Criminal Judiciary Law, unlawful evidence, unfortunately, could not be removed from the case file, furthermore, despite the existence of enough provisions no serious attempts and beliefs have yet developed in this regard, and as a consequence, we see that the prosecution and particularly the judicial authority are influenced as long as unlawful evidence exists in the case file⁷. However, under Sections 135/a and 254/II of the Criminal Trials Procedural Act, and especially, under the clear rule added to Article 38 of the 1982 Constitution by Act No. 4709, it is absolutely necessary to disregard unlawful evidence in judicial inquiries. Therefore it is required to be removed from the case file. As indicated above, the right to a genuine judicial process is violated as a consequence of not removing unlawful evidence from the case file.

In The Doctrine of Turkish Criminal Judiciary, Öztürk expresses the opinion that unlawful evidence should not be removed from the case file⁸. According to Öztürk, if unlawful evidence is removed from the case file, the possible control over this evidence will be prevented; Whether or not the evidence is obtained unlawfully can be determined only when the

⁷ Yener Ünver, "Ceza Hukukunda Objektif Sorumluluk (The Responsibility of Being Objective in Criminal Law)", *Ceza Hukuku Günleri – 70. Yılında Türk Ceza Kanunu Genel Hükümler (General Provisions of the Turkish Criminal Code in the 70th Year)* 26-27 March 1997 – Istanbul, Istanbul University, the Department of Criminal Law and Criminal Procedural Law, pp. 109-195, Istanbul, 1998, p. 185.

⁸ Bahri Öztürk, *Yeni Yargıtay Kararları Işığında Delil Yasakları (Evidence Prohibitions in the Light of New Precedence of the Cassation Court)*, Ankara, 1995, p. 45.

evidence remains in the file. According to him, it is not possible to accept the assumption that unlawful evidence can influence the judicial authority; If the judge is not strong enough to be influence by unlawful evidence, it would never be possible to maintain impartiality anyway; The unlawful evidence should be kept in a separate envelope in the case file, and this way, the allegations that it may have influenced the judge should be prevented⁹. According to Kaymaz, who shares the same view, the presumption that the evidence is unlawful could be wrong; furthermore, it is even possible to realise that the evidence was not unlawful after the case is finalised. Therefore, the decision of unlawfulness should be subject to the Cassation Court's review, and for this reason, the evidence should be kept in the file. The author agrees that the judge may be influenced by the presence of unlawful evidence in the file, but also says that the same possibility exists even when the evidence is removed from it. If the judge who makes a decision on whether or not the evidence is unlawful can be influenced by that evidence, he will already be influenced by it anyway during the course of making his decision. So, the author shares the same view with Öztürk on the way of preserving unlawful evidence¹⁰.

As explained below, it is not possible to agree with the authors on these matters. On one hand the evidence will be determined unlawful, and yet on the other it will be decided to be kept in the file for this or that reason. This idea is totally contrary to the essence of the judicial process, which is required to run in accordance with law, and to the right to a genuine judicial process principle, which needs to be maintained strongly during this process. The issue of reviewing whether or not evidence is obtained unlawfully should not be confused with the issue of removing evidence confirmed to be unlawful from the inquiry file. The subject matter of our study and debate boils down to the point that evidence confirmed to be unlawful could not and should not exist in the judicial process any longer.

In comparative studies on the use of unlawful evidence in Turkish and English judiciaries, Bıçak refers to an English law doctrine and

⁹ Bahri Öztürk, *ibid.* pp. 45-46.

¹⁰ Seydi Kaymaz, *Ceza Muhakemesinde Hukuka Aykırı (Yasak) Deliller (Unlawful Evidence in Criminal Judiciary Law)*, Ankara, 1997, p. 278.

stresses the side effects that might result from the exclusion of improperly obtained evidence. He states that these side effects may concern protecting judicial integrity, or the suspect, and deterring the law enforcement officers from future violations¹¹. In his attempt, the author stresses the significance of maintaining the principle of legitimacy of the verdict by way of excluding improperly obtained evidence.

In terms of evaluation of evidence, the system of "common-sense evidence" is chosen in Turkish Criminal Judiciary Law. According to this, the judicial authority independently evaluates the evidence gathered, and reaches a conclusion without being bound by the rules of legal proof (The Criminal Trials Procedural Act, Section 254/I). This system is related to gathering and evaluation of evidence and it is not without limitations. The most important limitation brought to this matter is: not using and considering evidence that is obtained by violating the rules on gathering evidence; in other words, not using unlawful evidence in the judicial process (The 1982 Constitution, Article 38/V; The Criminal Trials Procedural Act, Section 254/I)¹². Arising from this restriction, it is necessary to prevent the possible influence of unlawful evidence in the judicial process at the very beginning by excluding it from the file as soon as possible. As long as it exists in the file, there will always be the possibility of its influence on the judiciary authority, which is a safeguard for the presumption of innocence principle.

It is also impossible to agree on the idea that the Cassation Court's "judicial review" of unlawful evidence requires the evidence to be present in the file and therefore it should not be removed. Once the judicial authority has decided, on its own account or upon considering allegations, that the evidence is unlawful, the basis of this decision is put down in the court's records. Therefore, he cannot make an arbitrary and ruling say "this evidence is unlawful." If he does, the decision will constitute a violation of law. In other words, if decided that the evidence is unlawful, the judicial authority will have to make a written record of which evidence and why it is decided to be unlawful, and he will have to make an order to keep the unlawful evidence and the written record in a

¹¹ See Vahit Bıçak, *ibid.* p. 229.

¹² See Füsün Sokullu Akıncı, *ibid.* pp. 266-267.

place outside the case file. Of course, the “judicial review” of the Cassation Court will also consider this sort of decisions.

The meaning and purpose of the rules we mentioned above, which embedded in the Constitution as well as in the Criminal Trials Procedural Law, are to review and control whether or not evidence is unlawful, and if it is unlawful, to provide the power, primarily, to a judicial authority for its exclusion from the file. If a judicial authority decides that evidence is unlawful and removes it from the file, he could not be held responsible for it, because under Article 138/I of the 1982 Constitution judges are independent in their decisions and using their common-sense within the boundaries of law. Like his other decisions and acts, if the decision and act of a judge do not fall in the scope of an offence or crime described by law, he could not be bound “legally responsible” by his decision on evidence.

Under Subsection I of Article 138 of the 1982 Constitution, *“Judges are independent in their professional conduct; They make their decisions using their common-sense based on the Constitution and laws.”* Under this rule, it is clear that judges, and therefore, the courts are bound by the principles set out by law; there should not be no departure from law; the principles of law should come before personal views and judgements; materials that could lead to the creation of personal views and judgements must not be kept in the case file; and otherwise, a conviction given as a result of keeping unlawful evidence will be contrary to law, and thus, providing a basis for an appeal under Section 307 of the Criminal Trials Procedural Act. Under this section, *“An appeal can only be based upon a decision that is contrary to law. The omission or wrong exercise of a rule is a violation of law.”*¹³

It is essential to look into another matter concerning the exclusion of evidence from the case file. It is: What is the limit of the Cassation Court’s “judicial control” over the basis of the inferior court’s decision on the exclusion of evidence from the case file? Since the Cassation Court’s “judicial control” over inferior courts’ decisions will be over the rulings or the rulings that provide bases for decision (The Criminal Trials Procedural Act, Sections 305 and 306), the Cassation Court will not review the evidence, rather it will review the rulings made on the

¹³ For detailed information see Serap Keskin, *ibid.* p. 166 and its continuation.

evidence to see whether or not they are consistent with law, because the Cassation Court accomplishes its control and judicial function not by reviewing the facts of cases but by reviewing the lawfulness of them. If the Cassation Court finds the inferior court's decision on "unlawfulness of evidence" arbitrary, lacking a basis, or not having an adequate basis, it can turn down the decision only based on the view of being inconsistent with law. The Cassation Court will decide whether or not evidence is obtained lawfully, again, within its judicial control scope of "lawfulness", and if it decides that the evidence is obtained unlawfully, it will not make an order as to whether or not the evidence will be removed from the file, because how the evidence will be treated when decided to be unlawful is clearly stated in the Constitution as well as in the Criminal Trials Procedural Act.

As explained above, the court which has jurisdiction to deal with the case is the authority to decide whether or not the evidence is unlawful, and therefore, evidence that is decided to be unlawful should be removed from the case file so as not to influence the judicial authority and to remain in the case file, which is required to be completely consistent with law in every respect.

Furthermore, I must also stress the idea that removing unlawful evidence from the case file should also apply during the preliminary inquiry stage. If the Prosecutor of the Republic is satisfied that evidence is unlawful, by his own belief or by being informed by others, he has to remove it from the file with a report and keep it in a separate place, and if he instigates a state lawsuit he must submit the file to the court empowered to deal with the case without any unlawful evidence. Allowing a prosecutor to remove unlawful evidence, although in the very beginning of the inquiry stage, may be criticised.

It may be alleged that the authority of deciding the unlawfulness and its removal from the file should be given to a judicial authority, or at least to a judge, taking in to account the assumptions that the prosecutor is a party to a case, he is not independent, and that courts should decide on unlawfulness issues. I believe that the head of the initial inquiry is the prosecutor, and indeed, it is possible for him to reach a conclusion at the initial inquiry stage, which is when he makes decision as to whether or not he would set a case, and to keep the evidence in the file or to exclude

it. Moreover, the court which deals with the case has the authority to request from the prosecutor, at the final stage, any evidence excluded from the file whenever sees appropriate on its own view of upon a request by others. If the court which is authorised to deal with the case wants to see any evidence that has been excluded from the file, the judicial authority that has the power of gathering and considering evidence on its own discretion will make a decision about it.

I am of the view that the issue, whether or not evidence is lawful, should be decided by the prosecutor at the initial inquiry stage, and at the final inquiry stage, the judge presiding the trial should decide on it on his own will or by examining it upon a request made by others. If after the examination the evidence is decided to be unlawful, it should no longer stay in the file, which is required to be set in consistence with law in every respect. Keeping evidence decided to be unlawful in the file, and removing it from the case file by report or by decision do not bring the same result and affect to the matter. In the first situation, the presence of unlawful evidence in the file, in other words, its visual and physical existence, could influence the judicial authority who is about to make a decision that would result in the development of a presumption in this regard. In the second situation, because the unlawful evidence will be outside the file, it will definitely not carry the same influence affect to the judicial authority, on the contrary, as a result of having been removed from the file for its unlawfulness, it will lead to the development of a strong belief that it should not be considered.

This is an opinion which claims that the unlawful evidence obtained by violating the suspect's constitutional rights should not be used in the criminal inquiry process but allows for the use of other unlawful evidence in the trial, suggesting that the unlawful evidence should be removed from the file only by a court order obtained through a secondary case to be set, during the inquiry and trial period, asking for "the removal of unlawful evidence from the case file"¹⁴. Section 254/II of the Criminal Trials Procedural Act does not provide absolute prohibition on evidence, and I disagree with the idea which claims that the judges should have the discretion power of determining whether or not the

¹⁴ See Friedrich Christian Schroeder-Feridun Yenisey, *Dürüst Yargılama Hakkı (Fair Trial)*, İstanbul, 1997, p.83 and pp. 96-97.

suspect's constitutional rights were violated in obtaining evidence¹⁵. Nevertheless, this opinion can be accepted only in terms of its suggestion of removing unlawful evidence from the case file.

Conclusion

In practice, defendants and their lawyers have been always complaining about a lot of violations of law at the final and initial inquiry stages, which are conducted under the request and instruction of the Prosecutor of the Republic, and which are regarded as the start up basis of a lawsuit by the state. So, the violation of law that results from applying "protective measures" and "gathering and considering evidence" particularly during the preliminary inquiry stage, and presenting evidence considered to be unlawful in the case file brings a lot of serious problems with it in terms of the defendant's rights and the presumption of innocence principle as well as in terms of the principle of genuine judiciary process. As required by legal provisions explained above and the principle "judiciary process by focusing on unlawful evidence", which has rested upon for long, we must stress the significance and the necessity of serious consideration of unlawful evidence allegations, not rejecting such allegations without legal bases, and not keeping such evidence in the file any longer once decided unlawful. Since the written rules of the Turkish Criminal Judiciary System provides such definite and clear provisions, not even allowing for any debate, the absence of any serious effort in this regard, creates doubts and worries among criminal lawyers. If the system has adopted a principle and basis and has made it a rule, ignoring it or considering it as insufficient in practice should be regarded as a highly disturbing determination in terms of Turkish Criminal Judiciary Law.

Consequently, Turkish Criminal Judiciary Law and its enforcement are obliged to make positive decisions and a lot of progress concerning both unlawful evidence and its exclusion from the file to conform to the rules of law in achieving justice, and they are obliged to ensure that modern provisions do not stay in papers.

¹⁵ Friedrich Christian Schroeder-Feridun Yenisey, *ibid.* p. 81. See the debate on the classification of unlawful evidence, Ersan Şen, *ibid.* pp. 74-89.

Because of the reasons explained above, I must once again stress that the exclusion of evidence confirmed to be unlawful from the case and the assurance that it will be disregarded are both necessities; that these necessities come from the relevant rules, which are discussed above, under the 1982 Constitution and the Criminal Trials Procedural Act; that otherwise especially “the right to a genuine judiciary process” and the “state of law” principle will be damaged seriously; and that consequently, the decision of a judicial authority on a case that includes unlawful evidence in its file will be contrary to law.