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## **ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE BEFORE THE INTERNATIONAL CRIMINAL COURT- HYPOTHETICAL CASE**

### **ABSTRACT**

Originally, the paper was the Prosecution's submission to the International Criminal Court, in a hypothetical case that was the subject of examination at the International Moot Court Competition before the International Criminal Court. The hypothetical case raises the question of admissibility of illegally obtained evidence in criminal proceedings before the International Criminal Court. The paper argues that there is no obligation to absolutely exclude unlawful evidence obtained by violating human rights of the accused person. In this respect, the paper analyzes the case law of the International Criminal Court, *ad hoc* international criminal tribunals and the European Court of Human Rights.

**Keywords:** *Crime of aggression, illegally obtained evidence, right to privacy, International Criminal Court.*

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## INTRODUCTION <sup>3</sup>

Three democratic, neighboring countries, Bravos, Astipur and Cilanta are UN member states, separated by the Stormy Sea, all with different cultural, economic and historical backgrounds. Astipur is a technologically advanced country with a sophisticated military and a strong record of human rights compliance. Bravos is a developing country, which has been the subject of frequent human rights complaints over the years, particularly concerning harsh repression of labor strikes in the public sector.

Cilanta is a Commonwealth country, the home of many of the world's leading research institutions such as Queen's Landing University hosting a vast number of highly respected international law scholars. Relevant to our situation at hand is the economic aspect and the cobalt industry. Mineral cobalt, with its unique properties make it an essential component for the production of batteries that power electronic vehicles. With the rapid global expansion of the electric vehicle market, the demand for cobalt has increased greatly and its price has risen to \$100,000 per Metric Tonne (MT).

For three decades, Astipur has been the world's major exporter of cobalt, accounting for 60 percent of the world market in 2016, with a total export output of 64,000 MT pro year from 2010-2016. In 2016, vast cobalt reserves were discovered in the northern mountains of Bravos. Bravos immediately built up infrastructure for mining and exporting its cobalt.

It pursued a strategy of offering its cobalt for export at only \$50,000 per MT, and quickly gained a large and growing share of the world market. Its low-price exports forced Astipur to compete by significantly reducing the price of its cobalt exports, which caused unemployment to rise in Astipur and tax revenue to plummet. The Bravos cobalt mines are owned by the government of Bravos. In July 2018, cobalt mine workers in Bravos began to protest for better wages and working conditions. When an armed riot erupted just outside Bravos' largest cobalt extraction site known as the Dragon mine, on July 21, 2018, Bravos deployed dozens of Chlorine Aerial Bombs to quash the rioters. Eight hundred workers at the mine were killed. Bravos obtained the chlorine from an Astipur-based company called "Pentaas Chemicals" As required by Astipur law, Pentaas Chemicals sought and obtained a license from the government of Astipur for the export of 10,000 metric tonnes of chlorine to Bravos and to a dozen other countries around the world for industrial uses in 2017-2018. The U.N. Security Council met in emergency session on July 22, 2018 to consider a draft resolution

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<sup>3</sup> 2019 International Criminal Court Moot Court Competition Problem, Hypothetical case before the International Criminal Court (ICC): Prosecutor v. Dani Targarian of Cilanta. The introductory part of this paper presents the summarized and recounted facts of a hypothetical case that was the subject of the 2019 International Criminal Law Moot Court Competition.

introduced by Astipur that would condemn Bravos' use of chlorine gas in the previous Dragon mine attack.

A permanent member of the Security Council which imports large amounts of cobalt from Bravos vetoed the resolution, which had 11 yes votes, and three abstentions in the Council. On July 23, 2018 the President of Astipur, James Bannister, commissioned an opinion on the legality of using force against Bravos' chemical weapons production, storage, and delivery facilities from Professor Dani Targarian of Cilanta's Queen's Landing University..

On the morning of July 24, 2018, a protest concerning the Dragon mine chemical weapons attack began in the nearby Bravos city of Winterfall, where many of the families of the killed mine workers live. The protest began as a peaceful rally outside the Dragon Mine administrative building in Winterfall but soon escalated into mob violence, with acts of arson committed against several buildings in the area. In immediate response, Bravos fired dozens of Chlorine Aerial Bombs at the rioters. 1,400 civilians, including spouses and children of the previously slain mine workers, were killed in the July 24 gas attack.

The U.N. Security Council again met in emergency session on July 25, 2018, to consider another draft resolution introduced by Astipur. This one would create a U.N. investigative commission to report to the Security Council on the responsibility for the chlorine gas attack and would warn that perpetrators, including high level policymakers, would be held accountable.

The same Permanent Member of the Council vetoed the resolution, which again had 11 votes in support and three abstentions. During the next several days, other large-scale protests about the government's gas attacks commenced in the Bravos cities of Gulftown, Newtown, and Hightown. Astipur launched airstrikes against three targets in the state of Bravos related to its chemical weapons capabilities on the 29 of July, 2018.

In a communique dated July 29th, 2018, to the President of the U.N. Security Council, the government of Astipur stated, among other things, that based on international precedents -- including the 1999 NATO airstrikes in Serbia to save the Kosovar Albanians, the U.S./U.K. No Fly Zone imposed over southern Iraq from 1991-2003 to protect the Marsh Arabs, the August 2014 U.S. attack against ISIS on Iraq's Mount Sinjar to rescue the Yazadis, and the April 2017 U.S. airstrike against Syria's airfield and the April 2018 U.S./U.K./France airstrikes against Syria's chemical weapons facilities- a narrowly tailored airstrike against Bravos' chemical weapons production, storage, and delivery facilities would be legal under the international law principal of humanitarian intervention. They also noted that the advice of a Cilantian legal Scholar, Dani Targarian had the most impact on their decision making process when unanimously voting to launch airstrikes against the Bravos facility that manufactured the chlorine gas weapons, the Bravos facility where chlorine 5 gas weapons were stored, and the

Bravos airbase from which the chlorine gas was deployed – all three facilities are located near the Bravos capitol city Oldtown.

The U.N. Security Council met in emergency session on July 29, 2018, to debate the Astipur airstrikes against the Bravos chemical weapons facilities. Several states spoke in support of the action, saying that it was “legitimate response under the dire circumstances.” The permanent member that had vetoed the previous resolutions on the Bravos situation, however, said “the attack constituted a clear case of aggression and that the President of Astipur should be tried for the Crime of Aggression by the International Criminal Court.” The Permanent Member introduced a resolution condemning the airstrikes, which was defeated by a vote of 1 in favor, 11 opposed, and 3 abstentions.

The government of Cilanta was one of a dozen States that publicly condemned the Astipur airstrikes against Bravos. Having been alerted by the publication of the Astipur communique of the role Dani Targarian played in the airstrikes against Bravos, the government of Cilanta decided to search her residence for potentially incriminating evidence, but because Cilanta has not yet enacted its ICC Aggression Amendments Implementation Act, there was no domestic law that could authorize the search.

Although the Cilanta federal police could not obtain a warrant to conduct a lawful search, they nonetheless raided Dani Targarian’s home in Cilanta in the early morning hours (1:15 – 2:00 AM) of July 30, 2018. The Cilanta police indiscriminately went through her family’s personal belongings and confiscated all of the computers found in her home.

A Cilanta forensics expert was able to access Dr. Targarian’s computer files and uncovered a series of incriminating documents that Cilanta turned over in hard copy to the Office of the Prosecutor of the International Criminal Court on August 1, 2018. It is important to note that Cilanta is a party to the Rome Statute and ratified the Kampala Amendments of 2017, but failed all attempts to enact implementing legislation in its Parliament and it is not at this time able to prosecute the Crime of Aggression in its courts. The electronic documents indicated that James Bannister, President of Astipur, contacted Dr. Targarian via email on July 23, 2018, to request that she prepare on an urgent basis a legal memorandum for the government of Astipur opining on the legality of Astipur launching airstrikes against Bravos’ chlorine gas production facilities, storage facilities, and the airbase from which the chlorine gas attack was launched. It was visible from their correspondence that prof. Targarian gave two legal opinions. The first one was more balanced, and warned the mr. James Bannister of potential criminal liability, while the second, issued after an increased financial incentive of 5000 \$, was more convincing in supporting the attacks, justifying it as humanitarian intervention. Dr. Targarian was arrested during the July 30, 2018, raid on her home for attempting to obstruct justice due to her non-cooperation

during the search.

Unable to prosecute Dr. Targarian domestically for the Crime of Aggression, the government of Cilanta detained her under house arrest while it awaited issuance of an arrest warrant by the International Criminal Court. The ICC Prosecutor determined that there was a reasonable basis to proceed with an investigation into whether the Astipur airstrikes against Bravos constituted the Crime of Aggression. She further concluded that the jurisdictional requirements for pursuing a case under the ICC Statute were satisfied since Astipur, Bravos, and Cilanta had all ratified the Kampala Amendments, which came into force for them prior to the acts in question.

After the six-month clock had run without the Security Council making a determination that Astipur had or had not committed Aggression in its airstrikes against Bravos, on February 6, 2019, the Pre-Trial Division granted the Prosecutor's request to authorize an investigation and to issue a warrant for the arrest of the Defendant, Dani Targarian, for aiding and abetting the crime of Aggression under Article 8bis and Article 25(3)(c) of the ICC Statute. The next day, Cilanta transferred Dr. Targarian to the ICC's custody, and the ICC immediately appointed her Defense Counsel pursuant to Article 55 of the ICC Statute. Actions against James Bannister and other Astipur officials have been instigated separately. Thus, the question being asked is:

- Whether evidence seized from the home of the Defendant under the circumstances described in the Pre-Trial Chamber's opinion must be excluded under Article 69 (7) of the ICC Statute?<sup>4</sup>

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### **1. There is no absolute exclusionary rule of illegally obtained evidence within the Rome Statute**

#### Article 69 (7)

*Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:*

- (a) The violation casts substantial doubt on the reliability of the evidence; or*
- (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.<sup>5</sup>*

The essential provision regarding to admissibility of evidence before the International Criminal Court (Hereinafter: ICC) is provision 69 (7) of the Rome

<sup>4</sup> 2019 International Criminal Court Moot Court Competition Problem, Case before the International Criminal Court (ICC): Prosecutor v. Dani Targarian of Cilanta Appeal from the Pre-Trial Chamber's Decision on Confirmation of Charges, page 1. Originally, the hypothetical case contained three questions that the competitors had to answer, but for the purposes of this paper, we will address only one question, which is listed above.

<sup>5</sup> Article 69 (7), Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 (hereinafter: Rome Statute).

Statute. According to the linguistic interpretation of this provision, *prima facie* we can conclude that there is no absolute exclusionary rule in the criminal proceedings before the ICC. In other words, the ICC applies a relative exclusionary rule, which means that evidence obtained by violation of human rights or by the violation of the Rome Statute can be excluded from criminal proceedings, if such violation caused substantial doubt on the reliability of the evidence or if the admission of the records would be antithetical to and would seriously damage the integrity of the proceedings. Thus, this provision gives the ICC discretion to decide, case by case, whether the evidence obtained in violation of human rights or the Rome Statute fulfill this dual test.

In very first case, *Prosecutor v. Thomas Lubanga Dyilo*,<sup>6</sup> the defendant has asked for exclusion of material evidence claiming that the search of the apartment in his state was unconstitutional.<sup>7</sup> Although there has been a violation of the right to privacy, the evidence were admissible, because, according to the ICC, violation did not affect the reliability of the evidence, nor damaged the integrity of proceedings.<sup>8</sup>

The question of admissibility of illegally obtained evidence is one of the most complex issues in criminal proceedings. Most legal systems today use the relative exclusionary rule.<sup>9</sup> Even those states that originally adopted the absolute exclusionary rule, have modified it over time and have created a number of exceptions to the absolute exclusionary rule.<sup>10</sup>

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During the negotiations on the ICC Statute some delegations wanted to adopt absolute exclusionary rule, but this formulation was “*regarded as too broad*.”<sup>11</sup> It is clearly visible through national state practice in both legal systems that the absolute exclusionary evidence rule has been abandoned or modified due to it manifesting disproportional results, with international courts following the pattern

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<sup>6</sup> *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admission of material from the „bar table“, No. ICC-01/04-01/06, 24 June 2009, para. 48, 49 and 50.

<sup>7</sup> See *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo*, Public Redacted Version of Request to exclude evidence obtained in violation of Article 69(7) of the Statute, No.: ICC-01/04-01/06, Date: 7 November 2006.

<sup>8</sup> *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admission of material from the „bar table“, para. 48.

<sup>9</sup> See M. Damaška, *Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study*, University of Pennsylvania Law Review, Volume 121, 1972.

<sup>10</sup> For example United States of America. For this discussion read judgements *Murray v. United States*, 487 U.S. 533, 537 (1988), *Leon v. United States*, 468 U.S. 897 (1984), *Nardone v. United States*, 308 U.S. 338 (1939).

<sup>11</sup> Hans-Jörg Behrens, “The Trial Proceedings”, in Roy S. Lee (Ed.), *The International Criminal Court: the Making of the Rome Statute: Issues, Negotiations and Results*, Kluwer Law International, The Hague, 1999, 246.



in applying the relative exclusionary rule, including the ICC, which requires the dual test to be fulfilled in order for evidence to be admissible.<sup>12</sup>

**2. The fact that seizure of evidence conducted in an unlawfully way within the domestic law cannot be considered binding on the ICC**

Article 69 (8)

*When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.*

The fact that seizure of evidence is unlawful according to domestic law does not obligate the ICC, or other words, the ICC „*is not bound by the decisions of national courts on the admissibility of evidence*“<sup>13</sup> This is clear from Article 69 (8) of the Rome Statute which ICC have applied in the *Lubanga* case. In addition, the ICC have concluded that *“the evidence obtained in breach of national procedural laws, although those rules may implement national standards protecting human rights, does not automatically trigger the application of Article 69 (7) of the Statute.”*

Therefore, in accordance with the foregoing jurisprudence, the Pre-Trial Chamber is not obliged to consider the violation of the national procedural law when deciding on the admissibility of the evidence in the case at hand.

**3. Even there is violation of right to privacy, that fact requires no automatic exclusion of evidence**

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Raiding a private property without a warrant would represent a breach of one's right to privacy. Regarding this issue, the ICC relies on the ECtHR practice which makes differences between illegal evidence obtained by violating the right to privacy and unlawful evidence obtained by violating the prohibition of torture.<sup>14</sup> In this regard, in the case *Schenk v. Switzerland*, ECtHR have concluded that *“admission of evidence in breach of Article 8 will not necessarily affect the fairness of the trial.”*<sup>15</sup>

From other side, evidence obtained *“as a result of acts of violence or brutality or other forms of treatment which can be characterized as torture – should never*

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<sup>12</sup> See Article 69 (7) of Rome Statute.

<sup>13</sup> *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admission of material from the „bar table“, para. 36.

<sup>14</sup> See *Gäfgen v. Germany*, Application no. 22978/05, Judgment of 1 June 2010; *Jalloh v. Germany*, Application no. 54810/00, Judgment of 11 July 2007.

<sup>15</sup> *Schenk v. Switzerland*, Application no. 10862/84, Judgment of July, para 46.

*be relied on as proof of the victim's guilt, irrespective of its probative value.*"<sup>16</sup> Therefore, the ECtHR has general approach that the evidence obtained in cases of physical harm, forced use of emetic or compulsion, should be excluded because the evidence obtained in such a way causes a substantial breach of the fairness of the trial;<sup>17</sup> - while evidence obtained as a result of breach of right to privacy could be used as a proof in criminal proceedings.

Therefore, applying these standards to the case at hand, the Prosecution considers that evidence in the case at hand should not be excluded from the trial – simply because evidence in question was obtained by a slight violation of the right to privacy, and not a violation of the right to prohibition torture.

Besides the ECtHR practice, the ICC also takes into account the practice of the ICTY. In the sphere of admissibility of illegally or improperly obtained evidence, the ICTY found in the case *Prosecutor v. Delalić* that "*if credible evidence would have been excluded for procedural violations, it would represent a huge obstacle for the court decision-making processes.*"<sup>18</sup> The ICTY jurisprudence in the determination to the prevailing of international crime punishment rather than procedural errors, was confirmed again in the case *Prosecutor v. Brđanin*.<sup>19</sup>

Taking into account abovementioned case law, it can be concluded that breach of privacy does not necessarily cause a breach of the integrity of the criminal proceedings, thus, it requires no exclusion of evidence on that ground.

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#### **4. Evidence seized in the Defendant's home do not meet the dual test in article 69 (7) a) and b) and, therefore, should not be excluded from the record**

The evidence seized in the search of the Defendants home should not be excluded. Using linguistic interpretation of Article 69 (7) of the Rome Statute, evidence obtained by means of a violation of the Rome Statute or internationally recognized human rights would be inadmissible before the ICC if:

- The violation casts substantial doubt on the reliability of the evidence; or
- The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

The Prosecution will now prove beyond any doubt that neither of the necessary

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<sup>16</sup> *Jalloh v. Germany*, Application no. 54810/00, Judgment of 11 July 2007, para. 105.

<sup>17</sup> See above mentioned cases *Gäfgen v. Germany*, Application no. 22978/05, Judgment of 1 June 2010, *Saunders v. United Kingdom*, Application no. 19187/91, Judgment of 17 December 1996, *Jalloh v. Germany*, Application no. 54810/00, Judgment of 11 July 2007.

<sup>18</sup> *The Prosecutor v. Delalić et al.*, IT-96-21, Decision on the Motion of the Prosecution for the Admissibility of Evidence, 19th January 1998.

<sup>19</sup> *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Decision on the Defence Objection to Intercept Evidence, Judgment of 3 October 2003, para. 61.



prerequisites have been met.

**4.1. The violation did not cast a substantial doubt on the reliability of the evidence because their content would be the same even in the case a lawful search was conducted**

Article 69 (7) a) refers to the method of evidence gathering.<sup>20</sup> Thus, the first step of the dual test is determining whether the violation of someone's right to privacy has led to evidence being unreliable. The question that arises here is - *would the content of the evidence be different if the seizure and confiscation was commissioned in full adherence of the right to privacy?*

The answer in the case at hand is negative. The breach of right to privacy did not cast doubt on the reliability of evidence because, even if the case of full privacy right compliance, the text of confiscated e-mails would stay identical. In this regard, Prosecution would like to highlight the fact that Mrs. Targarian, in her submission, did not deny the authenticity of the e-mails, nor denied that the correspondence was her.

Precisely, the evidence was obtained by raiding the Defendants home, confiscating the computers and seizing the documents contained in them. The computers were processed by forensic experts who further excluded the evidence, which Cilanta sent, in the hard copy form, to the Prosecutor's office.

As argued above, the content of this evidence seized is not dependable of the way they gathered, as it is a case of material evidence in the form of e-mails. Thus, evidence is relevant; authenticity and reliability are not questioned in any way.

Therefore, the Prosecution in this case shares the ICTY's position in the case *Prosecutor v. Delalić et al* that "*it would constitute a dangerous obstacle to the administration of justice if evidence which is relevant and of probative value could not be admitted merely because of a minor breach of procedural rules which the Trial Chamber is not bound to apply.*"<sup>21</sup>

**4. 2. The admission of the evidence will not seriously damage the integrity of the proceedings because illegally seizure of evidence does not necessarily amount to seriously damaging the integrity of the proceedings**

The Commentary of the Rome Statute defines integrity of the proceedings

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<sup>20</sup> See *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admission of the material from "bar table", ICC-01/04-01/06, 24 June 2009, para. 40.

<sup>21</sup> *Prosecutor v. Delalic et. al.*, "Decision on the Tendering of Prosecution Exhibits 104 – 108", Case No. IT-96-21-T, 9 February 1998, paras. 18-20.

as “balancing a number of corners and values found in the Statute, including respect for the sovereignty of states, respect for the rights of the persons, the protection of the victims and witnesses and the effective punishment of those guilty of grave crimes.”<sup>22</sup>

Furthermore, the ICC in the *Lubanga* case emphasizes that the task of the Pre-Trial Chamber under Article 69 (7) b) is to examine “seriousness of the damage (if any) to the integrity of the proceedings that would be caused by admitting the evidence.”<sup>23</sup> In the abovementioned case *Schenk v. Switzerland*, the ECtHR concluded that the criminal proceedings, despite the use of unlawful evidence, could remain fair.<sup>24</sup> This view was confirmed by the ECtHR in later cases *Khan v. United Kingdom*<sup>25</sup> and *P. G. & J. H. v. United Kingdom*<sup>26</sup>. Further, the ICC adopted the reasoning of the ICTY in the case *Radoslav Brđanin*, that in the face of serious crimes, it is “utterly inappropriate to exclude relevant evidence due to procedural considerations, as long as the fairness of the trial is guaranteed.”<sup>27</sup>

Accordingly, the sole fact that a one’s right to privacy has been violated does not automatically make the trial as a whole unfair, as long as all other defense rights of the accused be respected throughout the proceedings. Applying abovementioned standards to the case at hand, the Prosecution considers that the search and seizure of evidence and their use in the present proceedings do not jeopardize the sovereignty of Cilante; do not jeopardize the rights of victims or witnesses in the proceedings; and ultimately do not jeopardize the principles of international law.

Violation of the right to privacy of Mrs. Targarian does not make the procedure antithetical and does not damage the integrity of the proceedings. In the end, Mrs. Targarian has the right to defense - that is, the possibility of disputing this evidence in the proceedings before the Trial Chamber.

Taking all matters into account, the Prosecution respectfully requests that the ICC upholds the Pre-trial Chamber decision on ruling the evidence seized in a warrantless search of the Defendant’s home as admissible in these proceedings.

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<sup>22</sup> Mark K., 1335.

<sup>23</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, para. 47.

<sup>24</sup> *Schenk v. Switzerland*, para. 46.

<sup>25</sup> *Khan v. United Kingdom*, Application no. 35394/97, Judgment of 12 May 2000.

<sup>26</sup> *P.G. and J.H. v. United Kingdom*, Application no. 44787/98, Judgment of 25 September 2001.

<sup>27</sup> *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Decision of the Defence, „Objection to Intercept Evidence“, 3.10.2003, para. 63.

## INSTEAD OF CONCLUSION

The evidence obtained must not be excluded because of national procedural law violation, as it can't be considered binding before the ICC. The Court shall not rule on the application of the State's national law, thus making the evidence admissible. The sole fact that evidence was seized by acts of privacy right infringement, does not imply automatic exclusion of evidence because the ICC does not apply this evidence exclusion rule in its practice.

The obtained evidence should not be excluded as the dual test prerequisites prescribed by article 69(8) of the Rome statute haven't been met. The way evidence has been obtained has no effect on its reliability. The content of evidence would be the same even if obtained by full respect of the Defendants right to privacy.

In the case at hand, it is a matter of material evidence seized by the police through computer confiscation, as opposed to evidence obtained by testifying or confessing, which is subject to potential manipulation during the obtaining process.

The admission of evidence in this case does not affect the integrity of the proceedings because one's privacy breach itself is not damaging to the proceedings, whose integrity should be viewed as a whole.

## **PRIHVATLJIVOST NEZAKONITIH DOKAZA PRED MEĐUNARODNIM KRIVIČNIM SUDOM - HIPOTETIČKI SLUČAJ**

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### SAŽETAK

Izvorno, ovaj rad predstavlja podnesak Tužilaštva pred Međunarodnim krivičnim sudom, na osnovu hipotetičkog slučaja, koji je bio predmet ispitivanja na Svjetskom takmičenju u simulaciji suđenja pred Međunarodnim krivičnim sudom. Hipotetički slučaj pred stranke postavlja pitanje isključenja nezakonito stečenih dokaza u krivičnom postupku pred Međunarodnim krivičnim sudom. Autori rada argumentuju nepostojanje obaveze apsolutnog izdvajanja nezakonitih dokaza prikupljenih kršenjem ljudskih prava optužene osobe. U tom pogledu, rad analizira sudsku praksu Međunarodnog krivičnog suda, *ad hoc* međunarodnih krivičnih sudova i Europskog suda za ljudska prava.

***Ključne riječi:*** zločin agresije, upotreba nezakonitih dokaza, pravo na privatnost, Međunarodni krivični sud.