THE RULE OF LAW AND THE CONCEALMENT OF EVIDENCE BY THE PUBLIC PROSECUTOR TO THE DETRIMENT OF THE DEFENDANT

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ABSTRACT

The criminal procedure is founded on a number of fundamental principles, each significant in its own way, though not equally so; therefore, the realization of the rule of law depends on their observance or violation.

Among the fundamental principles, primacy is given to the principle of "equality of arms," which seeks to guarantee parity between the parties to the proceedings, while placing the heavier burden on the public prosecutor rather than on the defendant. Under the Criminal Procedure Code, the public prosecutor is required to gather all evidence relevant to the case, irrespective of whether it supports the grounds for suspicion and the indictment under preparation, or points toward the opposite conclusion. By contrast, the position of the suspect or defendant is subject to a more flexible legal framework, allowing for the submission of no evidence at all, or only of such evidence as serves his defense.

It may be dismissed as a merely theoretically possible abuse, yet judicial practice worldwide acknowledges instances in which public prosecutors, in order to reinforce their position, advance their theory of the case, or pursue other personal motives, have withheld from the case file evidence unfavorable to that theory.

Such regrettably recurrent ("non-isolated") cases are addressed in this paper through a comparative analysis of several case studies, as well as through an examination of international legal instruments, which not only sanction this practice but also affirmatively establish its opposite — the right of the suspect or defendant to full access to all collected documents.

This paper, employing both the comparative method and the method of induction, demonstrates how the rule of law is frequently undermined by prosecutorial actions — often beginning in the pre-investigative and investigative phases and extending into the trial stage — a practice that may ultimately result in a mistrial.

Keywords: Rule of Law, Concealment of Evidence, Public Prosecutor

1. INTRODUCTION

The evidence collected by the public prosecutor in the proceedings does not constitute evidence that "belongs to the public prosecutor," but rather evidence of the proceedings themselves. The public prosecutor is obliged to collect not only evidence supporting the investigation or the indictment, but also any evidence in any way connected to the indications of a possible criminal offence.

All evidence obtained during the preliminary investigation and investigation must be shared with the other party, in the interest of objectivity in the proceedings. However, the public prosecutor, although formally equal in the proceedings, nevertheless de facto possesses significantly greater power when collecting evidence. A number of mechanisms are at his disposal, and experience shows that institutions cooperate much more promptly and closely with the prosecution.

That is why it is both a formal and an ethical obligation for the public prosecutor to share all evidence collected with the suspect or the defendant, in order to uphold the principle of equality of arms.

However, in practice — as can be observed almost everywhere in the world — there are cases where the public prosecutor, in a certain manner, "conceals" part of the evidence from the defendants, and such evidence is not included in the case file. This is particularly problematic when such conduct by the public prosecutor involves concealing evidence or collected materials that are favourable to the defendant or the suspect, the analysis of which might have prevented the initiation of criminal prosecution.

The purpose of this paper is precisely to demonstrate the legal and international regulation of the obligation to share all evidence with the other party, and, through examples, to show how such conduct is sanctioned when it occurs.

2. DEFINITION OF THE TERM

In the legal systems of various countries, this phenomenon — when the public prosecutor (or the prosecution) intentionally or through omission conceals or fails to disclose evidence that could indicate that the accused is not guilty — is referred to by different terms and regulated in different ways. A brief overview will be provided of how this issue is addressed in several legal systems, with examples and comparisons.

Before examining how this is understood globally, it is important to clarify two key concepts:

Exculpatory evidence refers to evidence that is "favourable to the accused" — that is, it mitigates or nullifies the charge, indicates innocence, or challenges the validity of the prosecution's evidence.[194]

- In many legal systems, the public prosecutor has an obligation — whether arising from law, the constitution, or case law — to disclose such exculpatory evidence to the

[194] https://en.wikipedia.org/wiki/Exculpatory_evidence?

defence, particularly if it is "material," that is, if the unavailability of such evidence could affect the outcome of the proceedings.[195]

When the prosecutor intentionally conceals or fails to disclose such evidence, this constitutes prosecutorial misconduct or prosecutorial suppression of evidence, and in some legal systems it is treated as a criminal offence or as grounds for overturning the conviction.[196]

3. ACCESS TO EVIDENCE IN PROCEEDINGS AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

There is no single "universal" regulation within the EU explicitly stating that "the prosecutor must provide all evidence," but this obligation effectively arises from a combination of:

1. an EU Directive guaranteeing access to all material evidence (both for and against the accused);
2. the Regulation on the European Public Prosecutor's Office (EPPO), which explicitly requires the collection of both incriminating and exculpatory evidence; and
3. the standard under the ECHR (Article 6) as developed in the case law of the ECtHR.

Specifically, the following provisions are relevant:

• **Directive 2012/13/EU (Right to information in criminal proceedings)**

Article 7 ("Right of access to case materials") provides that Member States must ensure "access to at least all material evidence held by the competent authorities, whether it is for or against the suspect or accused," in order to guarantee fairness and the preparation of the defence. Furthermore, if access is refused on the grounds of a serious risk or an important public interest, such refusal must be made by a judicial authority or, at the very least, be subject to judicial review (Art. 7(2)–(4)).[197]

• **Regulation (EU) 2017/1939 (EPPO)**

Recital (65) provides that investigations and prosecutions conducted by the EPPO must be carried out fairly and include an obligation to seek all types of evidence — both incriminating and exculpatory — either on its own initiative or at the request of the defence. Although this is not a general criminal procedural norm applicable to all national prosecutors, it represents a clear EU standard governing the EPPO's actions and serves as a guiding criterion for fair proceedings.[198]

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[195] https://www.alabar.org/news/from-the-alabama-lawyer-the-prosecutors-duty-to-help-the-defense-make-its-case/?

[196] Seth Apfe, Prosecutorial misconduct: comparing american and Foreign approaches to a pervasive problem and Devising possible solutions, available at https://arizonajournal.org/wp-content/uploads/2015/09/9-Apfel.pdf?

[197] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32012L0013

[198] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32017R1939

• European Convention on Human Rights, Art. 6 (ECHR) and ECtHR case law

The ECHR has clearly established that the prosecution must disclose to the defence all materially relevant evidence in its possession, both "for" and "against" the accused. Any limitation of this obligation is permissible only under strict judicial control and with compensatory measures. A landmark case is Rowe and Davis v. the United Kingdom (Grand Chamber), in which the Court formulated this very standard. This applies to all member states of the Council of Europe, including all EU member states.[199]

The concept of a "fair trial" has gradually internationalised and further developed the obligation of disclosure: from the classical notion of "knowing the case against the accused" to a right to full disclosure that also encompasses information favourable to the accused.[200] In their work John D. Jackson & Sarah J. Summers, The Internationalisation of Criminal Evidence (Cambridge, 2012), in Chapter 9 ("Defence Participation"), particularly section 9.3 "The Right to Full Disclosure of Evidence," with sub-sections on the scope of the right and the landmark ECtHR cases (Jespers, Edwards), the authors emphasise that case law does not treat the disclosure of all evidence to the opposing party as a purely national procedural issue, but as a derivative of Article 6 ECHR — the principles of "equality of arms" and "adversarial procedure." Crucially, restrictions (state secrecy, protection of sources) are not within the discretion of the prosecution, but must be subject to effective judicial control and accompanied by compensatory measures (summaries, redactions, or the use of a "special advocate" where applicable). The essential doctrinal conclusion is that, in the European context, "equality of arms" entails an active obligation on the prosecution to ensure access to "material evidence" — both for and against the accused — with the court as the ultimate arbiter of any limitation. As succinctly formulated, "The right to full disclosure of evidence" constitutes an integral part of the right to a defence, not an additional procedural luxury.

Brants and Franken provide a comparative overview of how the unified human rights standards of the ECHR operate across different legal traditions, with a focus on their practical implications. Their text is particularly valuable for translating the standard of disclosure into both adversarial and inquisitorial systems. In adversarial contexts (Anglo-Saxon), the authors summarise a rule closely aligned with the ECtHR formula: disclosure must encompass "all material information — for or against the accused." In inquisitorial systems, the emphasis is that the authorities must present "all relevant elements that have been or could have been gathered," rather than a selection favourable to the prosecution. They explicitly connect the principle of adversarial procedure with the defence's ability to know and challenge the evidentiary corpus, warning of the risk of "closing" parts of the case file without genuine compensatory measures. Briefly, yet with great precision, they capture the spirit of the doctrine: "Disclosure … is of the utmost importance, for the defence must know the evidence in order to be able to contest it." The text also examines the issue of who determines relevance and limitations: it is the judge, not the prosecutor; otherwise, the equality of arms and the fairness of the proceedings as a whole are undermined. This work serves as an

[199] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58496%22]}

[200] John D. Jackson & Sarah J. Summers — The Internationalisation of Criminal Evidence (Cambridge, 2012), Published online by Cambridge University Press: 05 June 2012

authoritative European reference in requests for access to "unused material," internal notes, raw data, and similar items, precisely because it transcends formal labels and focuses on the function of evidence within a fair trial.[201]

Caianiello, a professor at the University of Bologna, analyses how the ICC disclosure rules create a hybrid model between adversarial and inquisitorial traditions, and what this implies for the prosecutorial duty to ensure a fair trial. The text employs the Damaska typology to demonstrate that the infusion of different traditions can lead to fragmentation, thereby requiring clear policies and implementation mechanisms for disclosure. The main argument is that, without predictable rules on what, when, and how evidence is to be disclosed — and without sanctions for non-disclosure — even well-intentioned rules become ineffective. Although the analysis is situated within the field of international criminal law, its insights are equally applicable in the EU context (including to the EPPO). The prosecutor is not merely a "party"; rather, they must contribute to the construction of a fair trial through transparency and systematic disclosure. Importantly, Caianiello does not deny that legitimate confidentiality may exist; on the contrary, he insists on clear procedures governing limitations and on compensatory measures that provide the defence with a genuine opportunity to challenge. The text serves as a roadmap for designing a system that transforms the right to disclosure into a predictable and verifiable practice — with the court as the ultimate safeguard and with rules that prevent the selective "tailoring" of evidence.[202]

4. CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

4.1. ROWE AND DAVIS V. THE UNITED KINGDOM (GRAND CHAMBER, 2000)

The case arose from criminal proceedings in which paid police informants or collaborators played a key role. The prosecution withheld relevant materials related to those individuals, invoking public interest immunity (PII) — a doctrine allowing restrictions on disclosure in the interests of public safety, the protection of sources, and similar concerns. What was critical for the ECtHR was not only that part of the material had not been disclosed to the defence, but also that the trial judge was never granted full access to the withheld material to assess whether, and to what extent, it should have been disclosed, or at least to adopt compensatory measures (such as providing a summary to the defence, confirming its incriminating or exculpatory value, or ordering limited disclosure under controlled conditions). This omission undermined the central guarantee of Article 6: the equality of arms and the overall fairness of the proceedings "taken as a whole." The Grand Chamber emphasised that if the State genuinely needs to withhold material, this may only be done under strict judicial control — it is the judge, not the prosecutor, who must make the final balance between the public interest and the rights of the defence. In Rowe and Davis, the

[201] Chrisje Brants & Stijn Franken — „The protection of fundamental human rights in criminal process" (Utrecht Law Review, 2009), available online at https://utrechtlawreview.org/articles/102/files/submission/proof/102-1-102-1-10-20101001.pdf?

[202] Michele Caianiello — „Disclosure before the ICC: The Emergence of a New Form of Policies Implementation System in International Criminal Justice?" (International Criminal Law Review, 2010)

absence of such review meant that the prosecution had effectively "decided for itself" what not to disclose. The Court found a violation of Article 6 — not because PII is inherently impermissible, but because the procedures applied failed to safeguard fairness: there were no effective compensatory mechanisms and no judicial oversight of the non-disclosure This judgment established a lasting framework: even in sensitive contexts (such as cases involving informants or national security), the unavailability of evidence must be subject to judicial verification, with the least possible interference with the rights of the defence.[203]

4.2. DOWSETT V. THE UNITED KINGDOM (2003)

Unlike a classic PII dispute, the issue in Dowsett concerned the regime of so-called "unused material" — materials that the prosecution did not intend to use at trial and therefore retained. Following the conviction, it emerged that among the "unused" materials there were items that potentially supported the defence's case (for example, information concerning the confidentiality and credibility of key witnesses, or circumstances capable of creating reasonable doubt). The key systemic flaw was that the prosecution itself independently determined what was "irrelevant" and therefore need not be disclosed, instead of submitting the disputed material to the court for independent review and a decision on disclosure or appropriate compensatory measures. The ECtHR does not require the automatic disclosure of "everything and anything," but it insists that the process determining which material may be materially relevant to the defence cannot remain a closed loop within the prosecution.
Without judicial arbitration, the equality of arms is undermined: the defence must have a reasonable opportunity to obtain — directly or through the court — at least verification of whether the "unused" material contains anything that weakens the prosecution's case or strengthens its own. In Dowsett, the Court found a violation of Article 6, emphasising that a fair trial requires institutional checks and balances to prevent selective non-disclosure. The message is clear: even in the absence of formal PII, the prosecution cannot unilaterally monopolise decisions about what the defence should never see — particularly when such material may be exculpatory or crucial for the impeachment of witnesses.[204]

4.3. NATUNEN V. FINLAND (2009)

Natunen shifts the focus from "non-disclosure" to the destruction or non-preservation of data. During the investigation, communications were intercepted, and part of the raw material (the intercepts) was destroyed or not preserved before the trial. The defence requested full access, arguing that precisely in the inaccessible segments there could have been exculpatory content — for example, alternative information, contextual elements altering the incriminating meaning, or conversations undermining the prosecution's hypothesis. The Finnish authorities referred to administrative rules and selection criteria, but the ECtHR underlined a key principle: Article 6 §1, read in conjunction with §3(b), requires that the accused be afforded adequate time and facilities for the preparation of the defence. This cannot be achieved if the authorities have destroyed potentially relevant material, since the defence cannot even theoretically verify what it contained, nor can the court make an authentic assessment of its

[203] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58496%22]}

[204] https://hudoc.echr.coe.int/eng?i=001-61174&utm_

materiality. The Court also stressed a positive obligation: when the State possesses or controls materials that may be of use to the accused, it must preserve them (ensuring chain of custody and storage policies) and provide reasonable access or oversight. Destroyed material is, in effect, "hidden forever," which directly undermines the equality of arms. Accordingly, the ECtHR found a violation of Article 6. The judgment has had influence beyond Finland: a British official report, examining the admissibility of "intercept as evidence," explicitly warned that the destruction of intercepts prior to trial and without disclosure is incompatible with Article 6, expressly referring to Natunen. This reinforces the doctrine that "fair selection" by the prosecution is insufficient; what is required is preservation and independent verifiability.[205]

4.4. MIRILASHVILI V. RUSSIA (2008)

Mirilashvili does not concern PII, but rather genuine barriers to access: restrictions on inspection, on copying or extracting documents, and the unavailability of certain parts of the investigative material at stages critical to the defence. Under such a regime, the defence formally "has access," yet in practice cannot pursue an effective strategy: it lacks copies for analysis, cannot compare versions over time, and is unable to conduct detailed cross-examinations based on documents that are effectively out of reach. The ECtHR reiterated that a fair trial is not merely the absence of bias, but also the practical and effective opportunity for the defence to make use of the materials. When the State fails to provide sufficient procedural safeguards — for example, the possibility of making copies, adequate time for inspection, access to the complete case file unless a specific part is judicially restricted, or clear protocols for classified material under judicial control — the equality of arms is violated. The Court found a violation of Article 6, holding that the restrictions had not been accompanied by compensatory measures to preserve procedural balance (such as judicial review of what and why certain materials were unavailable, or other remedial mechanisms). Mirilashvili is significant because it illustrates a "different mode" of concealment: the evidence exists and is not secret per se, yet the defence is practically unable to use it. Practical effectiveness is precisely the key element in the ECtHR's test: the rights under Article 6 must function in the real, not merely the formal, world.[206]

5. UNDERSTANDING "BRADY RULE" IN USA

The Brady rule is a constitutional doctrine in American criminal law that imposes a positive duty on the prosecution to disclose to the defence all favourable evidence — both exculpatory (exonerating) and impeachment (undermining a witness's credibility) — if it is material to guilt or punishment. It originates from Brady v. Maryland (1963), in which the Supreme Court held that withholding an accomplice's confession relevant to sentencing violated the right to due process under the Fourteenth Amendment, irrespective of whether the

[205] https://hudoc.echr.coe.int/eng?i=001-91932&utm_

[206] https://hudoc.echr.coe.int/eng?i=001-90099&utm_

prosecutor acted in bad faith.[207] The rule was later expanded in Giglio v. United States (1972), which extended the notion of "favourable" evidence to include impeachment evidence — such as promises of immunity, benefits, or other agreements made with key witnesses.[208] The standard of materiality was further articulated in United States v. Agurs (1976)[209] and United States v. Bagley (1985)[210]: evidence is material if there exists a "reasonable probability" that, had it been disclosed, the outcome would have been different or confidence in the verdict would have been undermined. In Kyles v. Whitley (1995), the Court clarified that the obligation to disclose extends to all agencies acting on behalf of the prosecution (police, laboratories, etc.); the prosecutor "constructively" possesses their data and cannot rely on ignorance as a defence.[211] Finally, Strickler v. Greene (1999) codified the Brady formula: (1) favourable character; (2) suppression by the State; and (3) materiality.[212]

Normatively, Brady serves as a bridge between state power and the principle of equality of arms: when the prosecution holds a structural advantage in access to information, due process requires transparency to prevent conviction under conditions of informational asymmetry.

From a professional and ethical standpoint, this obligation is also reflected in ABA Model Rule 3.8(d), which codifies the prosecutor's duty to disclose favourable evidence in a timely manner — often extending beyond the constitutional minimum.[213]

5.1. GOALS OF THE BRADY RULE

First – Protection of Due Process: The Brady Court held that a trial in which the State withholds materially favourable evidence cannot be regarded as fair; the obligation to disclose is essential to ensure genuine adversarial proceedings.

Second – Prevention of Wrongful Convictions: As articulated in Bagley and Kyles, the doctrine is centred on the question of whether the undisclosed material would "reasonably" have altered the outcome. The analysis is cumulative — it considers the combined effect of all evidence withheld, rather than assessing each item in isolation.

Third – Institutional Accountability and Systemic Scope: Kyles extends the disclosure duty beyond the individual prosecutor to the entire prosecutorial team, embedding oversight of police and laboratory files. This prevents formal "hand-washing" through inter-agency deflection and ensures structural responsibility across the prosecution apparatus.

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[207] Brady v. Maryland, 373 U.S. 83 (1963). (Официјална репортажа на U.S. Supreme Court — U.S. Reports; avaiable atLibrary of Congress/Legal Information Institute.)

[208] Giglio v. United States, 405 U.S. 150 (1972). (U.S. Reports; Cornell LII)

[209] United States v. Agurs, 427 U.S. 97 (1976). (U.S. Reports;.)

[210] United States v. Bagley, 473 U.S. 667 (1985). (U.S. Reports.)

[211] Kyles v. Whitley, 514 U.S. 419 (1995). (U.S. Reports)

[212] Strickler v. Greene, 527 U.S. 263 (1999). (U.S. Reports.)

[213] American Bar Association, Model Rules of Professional Conduct, Rule 3.8(d)

Fourth – Normative and Ethical Goal: To consolidate the prosecutor's role as a "minister of justice," rather than merely a procedural adversary. This is why ABA Model Rule 3.8(d) requires the timely disclosure of favourable materials, even where the constitutional threshold of "materiality" may be debatable — thereby promoting the practice of early and comprehensive disclosure.

Fifth – Procedural and Operational Goal: To encourage policies such as open-file discovery, the indexing and logging of evidence, systematic review of disciplinary records relevant to witness credibility (the so-called Brady/Giglio lists), and the use of in camera judicial review and compensatory measures (redactions, summaries) where legitimate constraints exist (e.g., security or confidential sources). Together, these mechanisms transform the constitutional norm into a predictable and verifiable practice that mitigates power asymmetries and safeguards the integrity of judicial outcomes.

6. CASE LAW ON THE RESPONSIBILITY OF THE PUBLIC PROSECUTOR

6.1. MILAN PROSECUTORS IN THE ENI/SHELL CASE (OPL-245): CRIMINAL CONVICTION FOR FAILURE TO PROVIDE EXCULPATORY MATERIAL

In one of the rarest precedents within the EU, two Milan prosecutors — Fabio De Pasquale and Sergio Spadaro — were convicted for deliberately failing to disclose exculpatory material to the defendants in the high-profile corruption trial concerning Nigeria's OPL-245 oil licence. On 8 October 2024, the Court of Brescia initially imposed suspended prison sentences of eight months each; on 16 October 2025, the Court of Appeal upheld the verdict. The courts found that the prosecutors had omitted — and thereby deprived the defence of the possibility of adversarial examination — at least five key items of evidence, including a video recording by a former ENI lawyer and WhatsApp messages, which undermined the incriminating version of a key witness who later retracted his testimony. In its reasoning, the court emphasised the prosecution's duty to disclose both incriminating and exculpatory elements. The omission was classified as unlawful and resulted in criminal liability, even though the original ENI/Shell proceedings in Milan had ended in acquittal in March 2021. The case provoked strong reactions: some anti-corruption NGOs warned of a potential chilling effect on complex corporate investigations, while others welcomed the signal that prosecutors can themselves be held accountable for breaching disclosure obligations. The key lesson from this case is that a prosecutor's "selection" of evidence may cross the threshold from disciplinary misconduct to a criminal offence when material that could assist the defence is knowingly withheld.[214]

[214] https://www.reuters.com/world/europe/two-italian-prosecutors-convicted-hiding-documents-eni-shell-nigeria-trial-2024-10-08/?

6.2. PROCEEDINGS AGAINST THE STATE PROSECUTOR (FISCAL GENERAL) ÁLVARO GARCÍA ORTIZ FOR "DISAPPEARING" EVIDENCE AND AN INACCESSIBLE FILE

In 2024–2025, several legal and disciplinary proceedings were initiated against the Spanish State Prosecutor (Fiscal General del Estado, FGE) Álvaro García Ortiz, concerning issues of transparency and the management of evidence and records. First, in March 2024, the Supreme Court (Sala Tercera, contentious-administrative jurisdiction) upheld a lawsuit in a dispute over access to an official file ("expediente Stampa") and found that the concealment of the documents was unlawful, ordering the State to bear the costs — a clear signal that even the highest prosecutorial officials are subject to judicial oversight when they "close" a file that ought to be accessible. Subsequently, in February 2025, Supreme Court Judge Ángel Hurtado, in the reasoning of a decision related to another criminal inquiry, noted indications that the FGE had "caused messages to disappear" from mobile devices after becoming the subject of an investigation for alleged disclosure of secrets. Although the act of deletion itself did not receive an independent criminal qualification, the Court explicitly indicated that it could affect the course of the investigation. By June 2025, the same Court issued a procedural decision (auto de procesamiento) to prosecute García Ortiz for another offence (revelación de secretos). In parallel, media outlets reported that the State Attorney's Office had clashed with the judge over "omitted" exculpatory elements in the case file, adding to the controversy.
While these steps do not amount to a final criminal conviction for concealing evidence, they represent a rare and significant example of institutional accountability of a chief prosecutor for the unavailability or disappearance of potentially incriminating material, as well as for the unauthorised non-disclosure of a case file to the parties concerned.

7. SEVERAL CASES IN THE REPUBLIC OF NORTH MACEDONIA

There are several specific cases from North Macedonia in which the (non-)disclosure of materials favourable to the defence, or insufficient access to evidence, has been raised either within the proceedings themselves or in public reports.

1. "Monster" (the Smilkovsko Lake murders) – repeated proceedings

In January 2019, previously "unheard recordings" and other materials described by defence lawyers as having been "hidden" or not presented during the first trial cycle were introduced at hearings. The Supreme Court had earlier annulled the convictions and returned the case for retrial. This points to issues of incomplete disclosure and selectivity in the earlier proceedings.[215]

2. Sopot case (landmine explosion, 2003) – multiple annulments and repetition

The OSCE, in its First and Second Interim Reports, describes the history of the case and notes that, following the publication of certain intercepted communications, the Special Public Prosecutor's Office (SPO) assumed jurisdiction and requested the admission of

[215] https://4news.mk/skrieni-dokazi-za-sluchajot-monstrum-prezentirani-nepreslushani-razgovori/?utm_

new evidence. The context indicates that there were signs of potential influence on the outcome and that materials potentially relevant to the defence later came to light.[216]

3. Gruevski v. North Macedonia (ECtHR, fair trial claim)

In this proceeding before the European Court of Human Rights in Strasbourg, one of the issues concerned fair access to evidence derived from intercepted communications in the domestic proceedings — including observations that the applicant had not received copies of the audio recordings, but was only permitted to listen to them. The ECtHR examined this issue under the standards of Article 6 of the ECHR, particularly regarding the preparation of the defence and the principle of equality of arms.[217]

8. CONCLUSIONS

It is sufficient to say that no legal act adopted by the relevant institutions knows any deviation from the right of the defendant to be acquainted with all the material obtained through digital forensics.

Using excuses that the volume of the material does not allow it to be handed over in its entirety to the defendant or that the prosecution has made a selection of the relevant from the irrelevant materials of the case is at least an unsustainable impediment to creating one's own defense. The illusion is that any prosecutor whose interest, however ethical, is to substantiate the case with appropriate evidence will make a selection in favor of the defendant. Therefore, each defendant should make his own analysis and theory of the case by having access to all exhibits because the lack of only one evidence item can completely change the picture of the case.

The reasons being so, and above all because of the principle of equality of arms, both opposing parties should have equal access to the available evidence collected. The mere concealment of evidence by the prosecution is a crime committed by the relevant public prosecutor, and it must be followed by an appropriate response so that such occurrences disappear from legal practice. This is particularly relevant when the defendant is in a much less favorable position because his hunting for evidence is a hunt in the dark, assuming that the prosecutor has given him everything he has.

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