

Substantiation of Electronic Evidence

Abstract

The subject of this master thesis is the analysis of the procedural instruments that are entrusted to the law enforcement authorities on the basis of Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code) and which are used in current practice in connection with substantiation of electronic evidence. The main aim of this master thesis is to evaluate whether the current legislation is sufficient to effectively secure electronic evidence and at the same time protects constitutionally guaranteed fundamental rights of persons without unreasonable interference with these rights. Appropriately set procedural regulation is desirable with regard to the development of information and communication technologies, and therefore this issue is very relevant.

The first chapter deals with evidence in criminal proceedings in general, using a mainly descriptive method, which is essential for understanding the whole master thesis. At the same time, it does not neglect to refer to electronic evidence, especially through examples. The second chapter is the key part of the whole master thesis, analysing the legal regulation of electronic evidence from several perspectives. First, it divides them into categories for clarity, and then discusses the procedural methods by which they can be seized, based on whether or not the law enforcement authority has a data carrier in its possession. Finally, it analyses in depth the procedural instruments of the Code of Criminal Procedure used to seize or preserve electronic evidence. In particular, it critically focuses on the setting of conditions under which the given procedural instruments can be used. In the third chapter, a perspective on this issue at the level of EU and international law is provided. Attention is paid in particular to the newly adopted regulation within the Council of Europe and the European Union. At the same time, the American CLOUD Act, whose implementing international agreement is being negotiated by the United States with the European Union, is discussed. The fourth part of the master thesis discusses the seizure of electronic evidence from email, social networks, cloud storage and mobile phones, applying the general conclusions of the previous parts to specific situations. The last chapter enriches the master thesis with insights from practice through interviews with police officers. The thesis highlights the current challenges for the criminal procedure brought by new technologies, while offering possible *de lege ferenda* proposals.

Keywords: electronic evidence, new technologies and law, substantiation in criminal proceedings, cross-border access to electronic evidence, digitalisation