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DOKAZNA VRIJEDNOST PRIVREMENO ODUZETIH PREDMETA U KAZNENOM POSTUPKU

Doktorski rad

Sažetak

Prihvaćanjem načela slobodne ocjene dokaza u kaznenom postupku zemalja kontinentalne Europe u 19. stoljeću procesni zakoni ne sadrže propise koji se odnose na ocjenu vrijednosti pojedinih dokaza. Budući da kaznenoproceno pravo u BiH ne definira pojam predmeta kao dokaza, to je kaznenoprocenim subjektima ostavljen širok dijapazon mogućnosti predlaganja i ocjene dokazne snage privremeno oduzetih predmeta u kaznenom postupku. Privremeno oduzimanje predmeta je heteronomna radnja dokazivanja, koja obuhvaća više modaliteta (privremeno oduzimanje zbog dokazivanja, privremeno oduzimanje zbog sigurnosti ljudi i imovine i privremeno oduzimanje iz razloga učinkovitosti postupka), koji istovremeno koriste afirmaciji legitimnih ciljeva kaznenoga postupka i zaštite prava onih od kojih se imovina i predmeti privremeno oduzimaju. Privremenim oduzimanjem predmeta zadire se u osnovna prava čovjeka i građanina, kao što su pravo na privatnost, slobodu dopisivanja i pravo na imovinu, koja jamče čl. 8. Europske konvencije o ljudskim pravima i čl. 1. Protokola br. 1. uz Konvenciju te čl. II/3. k) Ustava BiH. Budući da je u kaznenoprocenom zakonodavstvu u BiH prihvaćeno načelo zakonitih dokaza, sudovi, krećući se u okviru kriterija koje je postavio zakonodavac, odlučuju o prihvatanju ili neprihvatanju dokaza na kojima će zasnivati svoju odluku. Dokazna vrijednost privremeno oduzetih predmeta kao media probandi u kaznenom postupku, ovisi o pravilnoj sintezi kriminalističko-forenzičke metodologije i procesnih odredbi, bilo da se ona poduzima kao samostalna radnja dokazivanja ili se predmeti privremeno oduzimaju u okviru drugih radnji dokazivanja, koje sud, na temelju slobodne ocjene u korelaciji sa drugim dokazima, cijeni i donosi odluku.

Deskripcijom normi pozitivnog kaznenoprocenog prava u BiH i komparacijom sa procesnim uređenjem u Republici Hrvatskoj, Republici Sloveniji i Saveznoj Republici Njemačkoj te pregledom međunarodnih dokumenata, utvrđeni su budući pravci kretanja kaznenoprocenog

zakonodavstva BiH u pogledu usklađivanja sa međunarodnim standardima. Ustavni sud BiH i drugi sudovi u BiH implementiraju praksu Europskog suda za ljudska prava kod donošenja svojih odluka, čime su garant poštivanja najviših standarda ljudskih prava i sloboda utvrđenih Europskom konvencijom o ljudskim pravima. U doktorskom radu su istražene i klasificirane pozitivne procesne odredbe vezane za predmetnu dokaznu radnju te kao takve apstraktne forme komparirane sa stvarnim manifestnim sadržajima u konačnim sudskim odlukama. Definisani su i modaliteti privremenog oduzimanja predmeta u kaznenom postupku i kriteriji za ocjenu dokazne vrijednosti predmeta kao dokaza te ukazano na potrebu uvođenja novih modaliteta ove radnje dokazivanja u kaznenoprocесnom pravu u BiH. Zakonitost u postupanju ovlaštenih službenih osoba i tužitelja je conditio sine quo non kod primjene ove procesne radnje u predistražnom i kaznenom postupku, obzirom da je samo na zakonu utemeljeno oduzimanje predmeta garancija da se ljudska prava ograničavaju samo ukoliko je to neophodno radi uspješnog vođenja kaznenog postupka.

Analizom kriminalističke djelatnosti ovlaštenih službenih osoba ukazano je na potrebu unaprjeđenja kriminalističkih i kaznenoprocесnih sadržaja kod dokumentiranja kaznenih djela korištenjem novih tehnologija, posebno u oblasti digitalnih dokaza, čime je dat značajan doprinos kriminalističkoj znanosti. Predloženim izmjenama i dopunama postojećih odredbi kaznenoprocесnog zakonodavstva u pogledu uvođenja novih modaliteta privremenog oduzimanja predmeta, posebno u dijelu dobrovoljne predaje predmeta, ostvaren je i znanstveni doprinos na polju kaznenoprocесne znanosti koji će odredit nove pravce u kreiranju kaznenoprocесnih normi, a sve s ciljem unaprjeđenja zakonitosti u dokumentovanju kaznenih djela i modela dokazivanja u kaznenom postupku u BiH.

Ključne riječi: dokazna vrijednost privremeno oduzetih predmeta, kaznenoprocесno zakonodavstvo u BiH, modaliteti privremenog oduzimanja predmeta u kaznenom postupku, dobrovoljna predaja predmeta u kaznenom postupku.

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EVIDENTIAL VALUE OF TEMPORARILY SEIZED ITEMS IN CRIMINAL PROCEEDINGS

Doctoral thesis

Abstract

By accepting the principle of free evaluation of evidence in the criminal proceedings of the countries of continental Europe in the 19th century, procedural laws do not contain regulations relating to the evaluation of the value of individual evidence. Since the criminal procedure law in BH does not define the notion of an item as evidence, it leaves the criminal procedure subjects with a wide range of possibilities to propose and assess the probative value of temporarily seized items in criminal proceedings. Temporary confiscation of items is a heteronomous act of proving, which includes several modalities (temporary confiscation for evidence, temporary confiscation for the safety of people and property and temporary confiscation for reasons of efficiency), which simultaneously serve to affirm the legitimate objectives of criminal proceedings and protect the rights of those whose property and items are temporarily seized. The temporary confiscation of the item encroaches on the basic human rights, such as the right to privacy, freedom of correspondence and the right to property, which are guaranteed by Art. 8. of the European Convention on Human Rights and Art. 1. of the Protocol No. 1. to the Convention and Art. II / 3. k) of the Constitution of Bosnia and Herzegovina. Since the principle of legal evidence is accepted in the criminal procedure legislation in BH, the courts, moving within the criteria set by the legislator, decide on the acceptance or non-acceptance of the evidence on which they will base their decision. The probative value of temporarily seized items as media probandi in criminal proceedings depends on the proper synthesis of criminal-forensic methodology and procedural provisions, whether it is taken as an independent act of evidence or items are seized as part of other evidence, which the court, based on free assessments correlated with other evidence, evaluates and makes a decision.

The description of the norms of positive criminal procedure law in BH and the comparison with the procedural regulation in the Republic of Croatia, the Republic of Slovenia and the Federal Republic of Germany as well as the review of international

documents determine the future directions of criminal procedure legislation in BH in terms of harmonization with international standards. The Constitutional Court of BH and other courts in BH implement the case law of the European Court of Human Rights in making its decisions, thus guaranteeing respect for the highest standards of human rights and freedoms established by the European Convention on Human Rights. In the doctoral dissertation, positive procedural provisions related to the subject evidentiary action were investigated and classified, and as such abstract forms were compared with the actual manifest contents in the final court decisions.

The modalities of temporary confiscation of items in criminal proceedings and criteria for assessing the probative value of items as evidence are also defined, and the need to introduce new modalities of this evidentiary action in criminal procedure law in BH is pointed out. Legality in the conduct of authorized officials and prosecutors is a conditio sine quo non in the application of this procedural action in pre-investigation and criminal proceedings, given that only lawful confiscation of item is a guarantee that human rights are restricted only if necessary for successful criminal proceedings. The analysis of criminalistics' activity of authorized officials pointed out the need to improve criminalistics and criminal procedure content in documenting criminal offenses using new technologies, especially in the field of digital evidence, which made a significant contribution to criminal science. The proposed amendments to the existing provisions of criminal procedure legislation regarding the introduction of new modalities of temporary seizure of items, especially in the part of voluntary surrender, have made a scientific contribution in the field of criminal procedure science which will determine new directions in creating criminal procedure norms, in order to improve the legality of documenting criminal offenses and the model of evidence in criminal proceedings in BH.

Key words: probative value of temporarily seized items as media probandi in criminal proceedings, the norms of positive criminal procedure law in BH, the modalities of temporary confiscation of items in criminal proceedings, voluntary surrender of cases in criminal proceedings