

Technical records as material evidence in criminal proceedings

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Abstract

Nowadays, with the aid of technical records - recordings (audio, visual or combined audio-visual) events and occurrences can be registered in the outside world in detail. The recording enables the creator or anyone who has it in disposal that at any moment of its reproduction, it can be found in detail how the recorded event has happened or how an occurrence seemed at the time of the recording. Among the current formats of technical records are included: photography, filming, magnetic, magnetoscope, and videophone recording etc. (Sahiti & Murati 2016, 295). The possibility provided by the rapid technical development is also of interest to criminal procedure because technical records containing any fact that may be proved in criminal proceedings may serve as a source of knowledge about facts. In other words, they may serve as evidence to establish facts in criminal proceedings. Given the extensive options that technical fact recordings provide, entities that use the aid of various devices from this field, as well as the different purposes of the author of the recording which have led to the case of making the recording, there is a reasonable question of the permission on their use as evidence in criminal proceedings. In Kosovo, the situation is clear in terms of recordings made in the criminal procedure, as Kosovo CCP¹ provides the possibility of photographing, filming, sketching, etc., of the crime scene, audio visual recording etc. examination of persons (defendant, witness, expert) or recordings of any action on judicial review.

Keywords: technical records, material, evidence, criminal proceedings.

Introduction

Many courts have begun to diminish the importance of the confession of the suspects, and have begun to reinforce the importance of material evidence in a judicial process. It may happen that a fact does not comply with the hypothesis raised or investigation version, but then the hypothesis should be changed in order to fit to the facts and not the opposite. Documentation of the situation at the crime scene is very important for the further flow of pre-criminal and criminal procedure. The meaning is that, someone who in one of the stages of the procedure will lead the case, will be able to gain a better insight of the crime scene, as well as the trace materials found at the crime scene be documented right. A tape or footage, can give details and nuances, which exceed very much the details or nuances that are reflected in written documents. The accent of a voice, the physical appearance of an object or person, may resolve some ambiguity or give some sense of the inexplicable statements in the text.

Therefore, in this sense, the records are real evidence and often have the same effect to viewing or appearance of the object in question (Murphy, 2005, 747). Video camera is a device already known to record video from the crime scene. Before entering the crime scene, before the examination, obtaining of evidence, the crime scene is

¹ Articles 208, 209 of the CCP of the Republic of Kosovo.

photographed or recorded. This results in the presentation of the crime scene as it appeared to be at the time of its examination. For video recording of the crime scene, the record of examination of the crime scene serves as a script to a film. So, the expert with a video camera follows step by step the description in the minutes of record, to make more complete the screen presentation of the entire crime scene of the event and the recording may be accompanied always by reading aloud the text of the minutes (Myftari, Shishani & Kotri, 2010, 108).

Removal of every trace before this process is completed is accounted to be a big mistake, because during the trial, any evidence taken before photographing or recording is performed, may be called into question about its admissibility (Becker, Ronald F., 2005, 41). The photograph of the crime scene examination is a special procedural document of a technical nature. It is a technical as well as independent recording as *sui generis* procedural test. The content of such recordings is a source of argument evidence, namely the form which contains facts that are the object of the argument. If the content of the photograph is accepted, it becomes evidence. Photos join the minutes and together make up the entireness. Photos must be technically made clear, visible, understandable and consistent.

Admissibility of photos during a judicial process should primarily be simple. In principle, the parties agree on the admissibility of most of the evidence presented on most issues and that this evidence can be accepted without any objection. However, when there are objections to the admissibility of evidence, the judge must decide the matter under jurisdiction of the court. The parties shall inform each other about any eligibility issues that should be referred to the judge and opposing evidence should not be presented or referred to the judge without being judged as admissible (Murphy, 2005, 95).

It is the duty of investigators to gather all present evidence-testimonies; it is the duty of prosecutors and judges to weigh the value of such evidence. The first test which evidence must pass is their confirmation in court. All investigators must not only have knowledge of the eligibility rules of evidence, but also the basic working knowledge on all kinds of evidence which are considered valid before the court (Becker, Ronald F., 2005, 16). The investigator should also have such a working relationship with the prosecutor, and knowledge of his work style which allows evidence to be admissible, when the same addresses formal questions. New prosecutors may be less familiar with various legal requirements regarding the admissibility of evidence, rather than an experienced investigator. Lack of proof concerning the admissibility of a piece of evidence, which is actually a proof, can lead to the "loss" of that evidence. For this reason, it is very important that the investigator, who was on the crime scene, assist the prosecutor in preparing all kinds of questions which help in the process of admissibility of evidence in court.

Once that evidence can be defined as any material which will assist the court in determining the probability of past events that need to be investigated, this shows the importance of the admissibility of evidence in a judicial process. The importance of cooperation between investigators and prosecutors is of importance also for the burden of proof in criminal cases. As a rule, the legal burden of proof of each element of the charge, and thus the guilt of the defendant is carried from beginning to the end

by the prosecution. As a simple example, may be taken the admissibility of photos which in principle is not complicated, but may remain incomprehensible or not clearly explained by the prosecutor who is not familiar with the format of a certain photo.

All evidence requires a specific approach regarding their admission process during the court proceedings. Testimonies are not the same as facts. The facts derive from testimonies. Testimonies may tend to prove a fact or not, or may be so powerful as to create a reasonable doubt. The investigator is the one who needs to know what evidence is required to determine the issue of guilt, if that evidence shows, or fails to show guilt and when guilt is evident, could that evidence prove the guilt behind reasonable doubt.

Admissibility of video recording

The rapid development of video and audio recording equipment has opened the issue whether such recordings may be used as evidence in criminal proceedings. The modern criminal law was created in the late nineteenth century, when such equipment did not have such practical importance and extent as today. Therefore, the procedural codes of the time, although by the principle of free evaluation of evidence allowed the use of any evidence for the confirmation of an important fact, yet they did not foresee the procedural way of use of records of equipment and technical instruments (technical records of facts). This deficiency has caused in theory different opinions about legal and procedural nature of their use for purposes of proof. The issue of the permissibility of the use of technical records depends, as a rule, on the way of their creation (Krapac, Davor, 2010, 483.).

The importance of video recording is also in the fact that it provides a realistic view of the crime scene because it gives the impression of the place and relationship of objects. In addition to the video depiction, there is also a sound description, so it is necessary to pay attention to internal communication during recording. Larger sequences must be recorded with very little interruption in order to avoid larger crossovers. When recording, it should be continued through the close crime scene, recording from a distance and then getting closer to the details to enlarging of the details. Investigators rely on video footage in order to document the crime scene visually. As technical recording are objects - carriers of evidence, in other words, they are part of the group of objects (items) that may serve as evidence in establishing the facts, "it appears that technical records not only can, but in principle, must be used to establish facts in criminal proceedings" (Bayer, II, 1978, 226). However, technical recording made by other persons outside the criminal proceedings, which, to be used as evidence, should be verified whether it meets the conditions to make possible the use of it as an evidence.

Evaluation of what the audio, visual or combined recordings prove is made by the court according to the theory of free evaluation of evidence, bearing in mind the other concrete evidence. These data can be verified by other evidence which the court shall provide upon motion of a party or on its own initiative (Krapac, Davor, 2010, 486.). We emphasize that the CCP of the Republic of Kosovo, has no provision prohibiting

the use of the recordings obtained through the criminal offense as evidence (i.e., unauthorized wiretapping, unauthorized photography), but since there are provisions that prohibit the use of violence in criminal procedure for obtaining the statements from the defendant, witness, etc., we consider that analogue position should be in the spirit of the law.

Conclusions

These days, rapid technical and technological developments in the world, provide a good opportunity to conduct successfully fair criminal proceedings and, of course, the possibility of fair establishment of the facts and evidence in a particular criminal case. Naturally, the possibility and ways of use of the different technical records is regulated by special laws or codes, which regulate the normal functioning of the entire criminal procedure in a particular country. Technical records that were mentioned above, serve as evidence in order to establish the facts in criminal proceedings. In Kosovo, the Code of Criminal Procedure foresees the possibility of recordings made in criminal proceedings such as photography, film, sketching, etc., of the crime scene, audio-visual recordings, etc., then the audio-visual examination of the defendant, witnesses, experts, or recordings of any action on judicial review.

We conclude that the importance of the use of technical records as evidence in a criminal case is increased when in addition to reading of the minutes in judicial review; the reproduction of technical recordings is made. The content of the technical recordings should be a source of evidence of argument, namely the form which contains facts that are the object of argument. For instance, photographing of the crime scene, or any other object, if the content is admitted by the court, it becomes evidence. In this case the Code of Criminal Procedure of the Republic of Kosovo recognizes their probative value. Before the court decides on admissibility of technical records as evidence, it shall first be convinced that the evidence that may be learned is important, and then any technical record must be verified with regard to originality and authenticity. If for various reasons the court establishes that it was intervened in the originality of technical records, it is normal and obligatory that they be not used as evidence in criminal proceedings. Evaluation of the content of the technical recordings in the sense of what it proves, is done by the court based on the theory of free evaluation of evidence, of course, taking into account also the other evidence, which is provided in the proper manner to solve any particular criminal case.

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