

Electronic evidence in criminal proceedings

Abstract

New technologies are currently influencing almost every aspect of our daily lives. It is therefore not surprising that such influence can also be observed in the context of criminal law. New types of crime are being committed and “traditional crimes” are sometimes being committed in a new way. However, new technologies are also expanding ways by which criminally relevant information can be detected. While the development of new technologies is proceeding at an unprecedented speed, it might be argued that legislation is lagging behind. Although the Criminal Code does take new technologies into account (at least to some extent), the Criminal Procedure Code has not yet undergone the long-discussed recodification and the regulation of new technologies in criminal proceedings is quite loose. The aim of the master thesis is thus to characterize electronic evidence, to describe how it is being handled in the context of criminal proceedings, and to provide a legal analysis of selected problematic aspects related primarily to the impoundage of electronic data. Attention is also paid to concepts related to electronic evidence, such as the perception of electronic device, data carrier and electronic data. The thesis provides some general explanations related to substantiation, especially the characteristics of the process of substantiation and it describes operative search means and seizure of items. Particular attention is then paid to the analysis of provisions that are often used in connection with the impoundage of electronic evidence, although their appropriateness or correctness is to some extent debatable. The thesis describes the issue of securing data, whether with or without securing its data carrier, password cracking, wiretapping (and its distinction from interception of telecommunication) and it also briefly deals with the so-called expedited seizure of data by a third party under §7b of the Criminal Procedure Code.

Key words: electronic evidence, substantiation, new technologies in criminal proceedings, impoundage of electronic data