

REVIEW

by Prof. Margarita Ivanova Chinova, Doctor of Law Studies, professional direction "law" (3.6.) in the scientific specialty "criminal procedural law", professor at Sofia University (SU) "St. Kliment Ohridski", Faculty of Law, appointed by Order No. RD-38-587 of 14.10.2022 to the Rector of the SU "St. Kliment Ohridski" for an external member of an academic jury for the public defense of a dissertation work for obtaining the academic and scientific degree "doctor" with candidate Gergana Ivanova Ivanova, professional direction "law" (3.6.) in the scientific specialty "criminal procedural law".

Gergana Ivanova graduated from the Science and Mathematics High School in Stara Zagora, and in 2018 – from Sofia University "St. Kliment Ohridski", Faculty of Law. Since the same year, she has been a PhD student in the scientific specialty "criminal process", with the topic of his dissertation work "Video recordings as evidence in the criminal proceedings". From 2021 she has admitted as a lawyer to the Sofia Bar Association.

The dissertation "*Video recordings as evidence in criminal proceedings*" consisted of 261 pages. Structurally, it includes a table of contents, a list of abbreviations used, an introduction, three chapters, a conclusion and a bibliography. The dissertation contains 308 footnotes, and the bibliography includes 70 titles in Bulgarian and other languages.

In the preparation of the study, the relevant judicial practice, decisions of the Supreme Court of Cassation, Interpretative decisions and Decisions of the Constitutional Court were analyzed. The practice of the European Court of Human Rights and the Court of Justice of the European Union is also analyzed. A comparative-legal review of the legislation and practices of Germany, Serbia, Romania, and Russia was made. They are used to illustrate good practices, as well as as arguments in defense of one or another supported thesis.

The issues related to video recordings in the criminal process are on the agenda and of great significance. In an increasingly digitized world, forms of using records as criminal evidence are constantly sought, in which the main purpose is the balance between the rights of citizens and the inviolability of their private lives and the public interest in punishing the perpetrators of criminal offenses. In CPC there is no strict regulation for private records that are not prepared according to the order and rules of the CPC, and therefore different practices are implemented and different doctrinal views are justified. In the

Bulgarian legal literature, there is no monograph on the topic of private video recordings as evidence in the criminal proceedings, which makes the present study even more significant. For the first time, the legal nature of this type of records has been examined both as material evidence and as electronic data and as carriers of computer information data. The theoretical understanding of the legal essence of private records has made it possible to draw valuable conclusions for state authorities' practice. The main objective has been achieved because the study clearly distinguishes and explains in detail the differences in the process of proof through the use of records made by the competent authorities under the rules of the CPC and private records. It is valuable to classify and analyze private records as accidentally made and made intentionally, under the control of a particular person. Also of importance is the the examination of admission, collection, verification and evaluation of private records. In this regard, in addition to theoretical summaries, the controversial judicial practice was also studied, in which generalized conclusions and recommendations were made for the lawful use of private records. The dissertation also contains a number of thoroughly motivated and scientifically substantiated proposals for amending and supplementing the current legal regulations. It is true that some of the proposed theses and opinions are debatable, but the latter are not less valuable, as it is the beginning of the future discussion and understanding of one or other theses.

The *main points of contribution* in this dissertation work can be outlined as follows:

Chapter one is devoted to the historical development and comparative legal review of video recordings as physical evidence in criminal proceedings.

The historical genesis of video recordings, which appear in the conceptual apparatus of criminal procedural science as part of forensic photography, is traced. German legislation is highlighted, according to which there is no prohibition on the use of video recordings that are not made in accordance with the rules and regulations of procedural law. German case law is analyzed in detail, outlining the three criteria that indicate that the right to identification self-determination has not been violated and the record can be used as evidence. After the review of the Romanian legislation, it was concluded that the use of private records in criminal cases has a wider scope compared to the Bulgarian legislation and practice. Specially analyzed and emphasized is the permission of the Serbian CPC in the sense that private records are included in the definition of "electronic record", and the inspection of such record is regulated as a mandatory action. An examination of Russian law and practice summarizes the factors that should be present in order

to assume that a record is credible. Finally, this chapter examines the ECHR's standards for the use of private records as evidence. The three prerequisites under which interference in the private and family life of citizens is admissible are underlined. The exposition in this part of the dissertation can be evaluated as a contributing point, because both the historical and the comparative-legal review were not done in a self-serving, mechanical and informative way. The good legislative authorizations and good practices that can be adopted in our country are summarized.

Chapter two explores the nature of video records and their distinction from other similar legal figures.

In the doctrine and judicial practice, there is no single concept of video recordings when they are not prepared according to the rules and regulations of the CPC and which in this thesis are aptly called "private recordings". For the first time in the Bulgarian legal literature, a definition of the concept of "private video recordings" was given and for the first time their multi-layered nature was analyzed - and as material evidence in the sense of Art. 109 of the CPC, as electronic evidence, as carriers of computer information data within the meaning of Art. 163 of the CPC. Private video recordings are classified into two groups and their features are summarized. The first type – recordings that are not made under the control of a specific person, but with a previously placed camera, called "accidental recordings". The second type is the video recordings that are made intentionally with a recording device by a certain person when a criminal act has already started or when there are clear indications that it will be carried out, called "intentional recordings". The criteria related to the inclusion in the criminal proceedings of the first type of records are established in the judicial practice. Contributory moments are outlined in the generalization and theoretical clarification of these criteria. Regarding the inclusion of the second type – intentional recordings, the jurisprudence is contradictory. In this regard, for the first time in Bulgarian legal literature, the thesis that private video recordings have the characteristics of electronic evidence has been convincingly proven. Particular attention deserves the persuasively maintained thesis that private video recordings, since they are electronic evidence from another point of view, should be collected in the process of proof as computer information data according to the rules of Art. 160-163 of the CPC. Moreover, it is suggested that in the application of this procedure, the recording taken on another carrier should be used not as material evidence, but as material source of evidence.

In distinguishing private records from written evidence, the question of the exported photo from the private record also found a reasonable answer. We shall agree with the common understanding that such a photograph does not bear the marks of written evidence because it does not possess the characteristics of a document.

In *chapter three*, the topics related to the admission, collection, inspection and evaluation of video recordings as evidence in the trial are examined as theory, case law and legislation. Again, the thesis is emphasized that both private recordings that are accidental and deliberate are in principle admissible as evidence in criminal proceedings, but must be treated differently in the evidentiary process. In this regard, the thesis has been further developed that deliberate recordings are admissible as evidence in criminal proceedings, but their crediting must be subject to a test of the balance of competing interests in the light of the standards established in ECHR practice and national traditions. This opinion deserves special attention given the different practice of the courts in relation to this type of records.

Contributory moments are also found in the study of the problems related to the recording of persons in cases provided by special laws as an exception to the principle that no one can be photographed or recorded without their knowledge or despite their explicit consent. The video recording under the Law on Road Traffic, the Law on the Protection of Public Order at Sports Events, the Law on Private Security Activities and the Law on Electronic Communications was analyzed. Useful proposals *de lege ferenda* have also been made - in these laws to provide for a special order for the destruction of records and to increase the time of their storage.

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In a separate section, the stage of collecting private records in the process of proof is analyzed, and its specifics are studied. Among the means of proof by

which private records are collected, voluntary surrender is the first to be discussed.

In this regard, appropriate recommendations have been made to the judicial practice and some proposals *de lege ferenda* such as the voluntary surrender to be regulated as a means of proof.

Valuable for legal practitioners is also the study of the examination as a method of collecting private records, since the dissertation summarizes and formulates a number of recommendations and practical advice in conducting this procedural action.

In connection with the search and seizure, various practical hypotheses have been considered, including the performance of these actions in case of urgency, and appropriate conclusions have been drawn for the practical-applied activity.

Various practical problems are defined with regard to the study, which are raised in the case law, such as whether the court forms an internal conviction, if the investigative action is carried out by this composition in the conditions of urgency when considering the case in an order hearing for surrender on court. In this connection, a corresponding proposal *de lege ferenda* was formulated, which would actually ease the jurisprudence. It is proposed to supplement Art. 252, para. 1 of the CPC - in urgent cases of judicial investigation, when this is the only possibility to collect and preserve evidence, the court should consider the case immediately after holding the dispositional hearing.

For the first time in the Bulgarian legal literature, the collection of private recordings from mobile phones has been investigated. The Russian doctrine and practice and the tasks that are set before the specialists in seizing computer data from the memory of mobile devices are illustrated. Since the confiscation of the mobile device is related to infringement of the property right, it is suggested that the term of this confiscation be as short as possible. In order to comply with this deadline, it is also suggested that the authorized person be present when the action is performed. Furthermore, it is correctly held that the subject of interest in the proceedings is the recorded private record, not the technical device on which it was made, and therefore it must be returned immediately.

In a separate section, the specifics of the stage of verification of private records and the means of proof by which they are verified are specified and summarized.

The judicial practice in connection with the conduct of video recording inspection is contradictory. According to some courts, the inspection is not

mandatory when video technical expertise is assigned to the case. The thesis of the author is convincingly defended, according to which the inspection is a mandatory action when a private recording is included in the case. The proposition that this examination should be held in court session in the presence of the parties in an adversarial procedure was also successfully defended.

In relation to the object of the expertise, there is also conflicting case law. Sufficient arguments have been given in support of the practice according to which the object of examination can be not only an original recording, but also a re-recording.

Useful for practice and doctrine is the study of the peculiarities of private recordings in video technical expertise. In this connection, the concepts of credibility and authenticity of private records have been specified. In practice and doctrine, different solutions are given to the problem of whether video technical expertise is mandatory when a private recording is made. The dissertation comprehensively motivates the understanding that this expertise is mandatory when a tendentious private recording made under the control of a certain person is made. In this connection, a number of recommendations to the experts have been formulated in relation to the circumstances that must be assessed and which are important for the correctness of the conclusion.

Contributory moments are also found in the study of facial identification expertise. On the basis of the European standards and the legislation and practice of France, a number of opinions are motivated specifically in relation to the taking of samples for comparative research for the needs of this expertise. Compulsory seizure and the requirement of proportionality of the coercion that could be applied were specifically developed.

In connection with the phonoscopic examination, the controversial judicial practice on the topic of whether speech samples can be forcibly seized for comparative research has been studied. The understanding that this is not possible is convincingly defended, and therefore when such an examination is not appointed due to the refusal of the accused to provide a sample of his speech, this would not be a substantial procedural violation. At the same time, we must agree that there is no obstacle in a criminal trial to using as comparative material a recording of a radio or television broadcast.

In connection with the interrogation, a number of recommendations to judicial practice were brought out and formulated, such as a mandatory interrogation of the person who made the private video recording, as well as the person who voluntarily handed over the recording, the expert who was assigned

the video-technical expertise should also be present at the interrogation, with opportunity to question the witness, etc. In connection with the recognition, the thesis is defended that this action could also be performed by exporting a single photo from the record to be presented to the recognizer together with other, similar photos. A reasoned answer was also given to the question of whether a substantial procedural violation was committed if the recognizer had previously viewed the recording.

In the analysis of the admission, collection, verification and evaluation of private records in the appellate and cassation instance, a number of principled permissions have been given and the essential procedural violations that are allowed in the performance of this activity have been brought out, which has the meaning and value of a scientific contribution.

In this sense, a general conclusion can be drawn that the dissertation contains scientific and applied results that represent a contribution to science, practice and legislation and that it meets all the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria and the Rules for its Implementation . The dissertation convinces that Gergana Ivanova possesses in-depth theoretical knowledge in the scientific specialty "criminal procedural law", demonstrating the necessary qualities and skills for conducting scientific research.

The Abstract is developed on 20 standard pages. It reflects both the content and the structure of the peer-reviewed work. It precisely defines the object, purpose and tasks of the dissertation research. Contributions and scientific publications are accurately reflected in the abstract.

The publications on the dissertation work are four in number, which is enough for admission to public defense.

In view of the above,

Conclusion - I give a positive assessment of the dissertation work - "Video recordings as evidence in the criminal proceedings" and I propose to the honorable scientific jury to award the educational and scientific degree "doctor" to Gergana Ivanova Ivanova, professional direction "law" (3.6.) in a scientific specialty "criminal procedural law".

20.11.2022 г.

Reviewer:.....

/prof. d-r of legal sciences Margarita Chinova/