

FACTUAL IDENTIFICATION OF MISDEMEANOR

Mladen Jeličić
Misdemeanor court in Šabac

Summary: In this paper the author discusses the concept of factual identification of misdemeanour as the main condition for the application of general legal norms to a specific case. After introductory remarks in which the basic postulates of the application of law are pointed out, the author gives a summary theoretical analyses and defines the considered concept, providing its key characteristics. As a result of this, the author concludes that the factual identification of the misdemeanour is manifested in the substantive-law and procedural-law aspects. By examining the material-legal aspects of the notion, the author points to the connection between the factual identification of the misdemeanour and the structure of the legal norm, since the elements of the legal norm (disposition, sanction, presumption of disposition and the presumption of sanction) envisaging an abstract factual condition as a condition for applying the norm determine the relevance of the factual identification of the misdemeanour. In this part, emphasis is placed on the importance of the technique of prescribing misdemeanour and the way of knowing the facts of law, and the elements are also considered that make the factual identification of misdemeanour, which can be divided into mandatory and optional. Obligatory elements include the identification of the subject of the misdemeanour, the time and place of the commission of the misdemeanour, the factual description of the act of execution and the circumstances necessary for the misdemeanour to be determined as accurately as possible. The optional element is the objective condition of incrimination without whose guidance there is no valid factual identification of the misdemeanour. Considering the procedural characteristics of the concept, the author points out that the effect of the factual identification of the misdemeanour on the misdemeanour procedure is multiple: it is the most important part of the indictments, the necessary condition for prosecuting the defendant and the determination of the misdemeanour responsibility determines the factual framework of the evidence procedure by defining the case of proof, it can be modified during the procedure, and it is the basis of a court decision. Then, the paper points to the necessity of a correct factual identification of the misdemeanour in the pronouncement of the indictment, and certain legal provisions relating to the examination of the indictment in respect of the factual identification of the misdemeanour are analysed from the aspect of the impartiality of the court and the equality of the parties in the misdemeanour procedure. The author believes that the current court practice unjustifiably favours the authorized prosecutor and that he must bear the consequences of an inadvertent factual identification of the misdemeanour, and that it is not the court's duty to assist an authorized prosecutor and to teach him how to properly compile the indictment. In addition, the anomalies of certain legal solutions have been highlighted. Finally, as a result of the conducted study, the author gives the methodical procedure and guidelines for the legally valid factual identification of the misdemeanour. It was emphasized that the methodical procedure consists of a normative and formal part and the importance was pointed out of the correct factual identification of the misdemeanour. The author concludes that it is necessary to educate authorized prosecutors who often do not possess the necessary legal knowledge and have the status of a party in the misdemeanour procedure. In connection with the above, the author indicates that it is necessary to amend certain legal solutions and in practice objectify the principle of impartiality of the court and equality of the parties in the misdemeanour procedure.

Keywords: application of the right to a specific case, structure of the legal norm, legally relevant and decisive facts, factual description of the misdemeanour, impartiality of the court.