

# **Adversarial principle in Czech criminal procedure**

## **Abstract**

Although the principle of adversarial proceedings is not explicitly enshrined in Section 2 of the Criminal Procedure Code, it is one of the fundamental principles of criminal proceedings, as it provides the accused with the opportunity to actively participate in the ongoing criminal proceedings and, through the presentation of his version of the “truth”, to influence the court’s decision on his guilt and possible punishment. Based on this premise, the case law of the European Court of Human Rights considers it to be an integral part of the right to a fair trial and, in defining it, emphasises both the right to be informed of all the opinions and evidence discussed in the proceedings and the right to comment on them. However, alongside this subjective conception of adversarial principle, there is a more objective approach, which focuses on adversarial principle as a dispute of opinions of the parties to the criminal proceedings, constituting the very essence of the judicial process and providing the court with an effective means of finding the “truth”. The subject of this thesis is therefore an analysis of the various conceptions and functions of the adversarial principle and a critical assessment of the scope and limits of its application at the various stages of criminal proceedings, taking into account the fact that the requirement of adversarial proceedings inevitably conflicts with other principles and interests governing criminal proceedings.

The first part of the thesis outlines the individual functions of the adversarial principle and their reflection in criminal law doctrine and case law. Based on such analysis, the principle in question is placed according to its functions in the system of basic principles of criminal proceedings. The second part of the thesis focuses on the adversarial principle in preliminary proceedings, especially the opportunity of the accused to inspect the criminal file during and at the end of the investigation, the right to participate in the investigation and the applicability of evidence taken in the preliminary proceedings at later stages of criminal proceedings. The third part of the thesis deals with the portrayal of the procedural position of the parties before the court and the influence of adversarial principle on it. Emphasis is placed on the accused’s right to express his opinion and to comment on the pieces of evidence exhibited before the court with the section concluding with a discussion of the legislator’s interest in expediting criminal proceedings and its conflict with the right to adversarial proceedings as well as other fundamental principles of criminal proceedings. The last part

examines the fate of the adversarial principle in the proposed recodification of the Criminal Procedure Code, both the general question of the explicit enshrinement of the fundamental principles of criminal procedure in the proposed act and a detailed analysis of the proposed definitions of the principle in question, as well as its impact on the overall concept of the Czech criminal procedure.

In the conclusion of the thesis, the author evaluates the result of his examination, concluding that the principle of adversarial proceedings is not sufficiently fulfilled, especially in the preliminary proceedings. Namely, the right of the accused to inspect the criminal file in the custody proceedings is unjustifiably limited, and the adversarial principle is not sufficiently ensured in the case of urgent and/or non-repeatable acts carried out before the initiation of criminal prosecution, the result of which can be used as evidence in the proceedings before the court. Therefore, the author, as part of his *de lege ferenda* considerations, suggest specific ways of strengthening adversarial principle in the above-mentioned cases, and at the same time warns against speeding up criminal proceedings to the detriment of their adversarial nature, as well as emphasizes the fact that adversarial principle is part of any model of criminal procedure and therefore cannot be a fundamental reason for changing the current model of Czech criminal procedure.

**Key words:**

Right to adversarial proceedings, right to a fair trial, adversarial principle