

Defence in the criminal trial by the defence counsel

Abstract

The topic of the submitted thesis is the defence by the defence counsel, with a special emphasis on the defence during the trial. The criminal trial, as its title suggests, plays a pivotal role in the criminal proceedings and the defence counsel has a crucial influence on its course. It is at the criminal trial, that the greatest degree of evidence is taken, and where the defence has the widest range of rights and opportunities to influence the course of the criminal trial. In the exercise of these rights of the defence, the defence counsel plays an absolutely indispensable role and consequently has a significant influence on the decision on guilt and punishment. The aim of this thesis is to analyse the legal provisions concerning both the right to defence and the defence in the criminal trial and to provide a comprehensive overview of all the rights the defence possesses and the most appropriate and efficient ways for defence counsel to exercise them during the trial. The present thesis thus aims to evaluate the current legal framework and, on this basis, to make proposals for possible future amendments. This thesis also continuously reflects on the changes that the criminal law has undergone through the amendments, in the context of both case law and the opinions of the professional community. This in turn leads to final reflections on the possibility of extending certain rights of the defence, or the possibility of clarification of certain ambiguities that arise as a result of newly introduced criminal law institutes.

The introductory chapter aims to provide an overview of the right of defence itself, through its key components. At the same time, the chapter is also used for brief reflections on the practical handling of the rights and obligations that the accused has under the general right of defence.

The following chapter deals with the representation of the accused in criminal proceedings. The types of representation of the accused in criminal proceedings are described in detail. First of all, the choice of defence counsel by the defendant is discussed, with an emphasis on the constitutional protection of this choice. Alternatively, the representation of the defendant on the basis of a court decision is discussed, including the reasons why such an approach is taken. Particular attention is paid to the protection of the interests of the defendant in the form of the institute of mandatory defence as one of the necessary guarantees of a fair trial. The protection of disadvantaged defendants is further emphasised in the section on free defence. The chapter then concludes with the issue of the deputy of the accused legal entity, which is very close to the topic of representation of the accused.

Since it is impossible to provide a comprehensive overview of the rights of the defence without analysing the person of the defence counsel himself, the third chapter of this thesis is devoted to this issue. It contains a general description of the rights and obligations of the defence counsel in criminal proceedings. Emphasis is placed on the lawyer's duties towards the client, i.e. the defendant. At the same time, this chapter discusses practical issues relating to the plurality of defence counsel and their cooperation in the defence, as well as issues relating to the representation of multiple co-defendants.

Fourth chapter provides a complex overview of the rights and obligations of the defence at the trial. Particular attention is paid to the role of the defence counsel and the actions he/she takes both in relation to the accused and to the other parties in the criminal trial. The chapter is designed chronologically and thus the beginning of the criminal trial is analysed first, followed by the part where evidence is taken, and finally the conclusion of the main trial and the possible appeal by the defence. The chapter describes in detail how the defence counsel should proceed during the criminal trial, how he or she should prepare the defendant for the different stages of said trial and what factors the defence counsel should take into account when preparing the defence tactics.

Following the detailed examination of the issue of defence counsel, the final chapter presents *de lege ferenda* considerations. These considerations respond to the shortcomings, that the author of the thesis believes, the current legal regulation of defence suffers from, or these considerations take into account foreign legislation that could be an inspiration for the Czech legal system. The shared motive of these reflections is to strengthen the position of the defence in the criminal trial and outside it, or to modify newly introduced institutes, such as the declaration of guilt by the defendant.

The thesis concludes with a summary of the main points and, on the basis of the findings and the overall assessment, conclusions are presented, with the aim to present some proposed changes concerning the topic of defence counsel, as well as a final evaluation of the current legislation.

Key words: Criminal trial, Defence counsel, Defendant