

Nemo tenetur se ipsum accusare principle

Abstract

This thesis describes the principle of nemo tenetur se ipsum accusare in criminal law. One of the guiding principles of the criminal process in a modern democratic state, which is closely related to the right to a fair trial and one of the pillars on which the defense in criminal proceedings is built. This thesis focuses on historical development of this principle in our country and abroad, how the contemporary view of this principle in criminal proceedings gradually changed, both within continental law and anglo-american common law. Furthermore, the thesis describes the use of the principle of nemo tenetur in the current criminal process in Czech law and in the world, with a focus on guilty plea and plea deals.

The first chapter contains the historical development of the principle in the continental system of law and in anglo-american common law, with the introduction of several important cases from the United States of America and their legal regulation, which in its essence was a prototype of the current concept of this principle. The second chapter contains an overview of how the principle is implemented in individual national and international legal systems. When part of this chapter is particularly devoted to the decisions made by the European Court of Human Rights and its changing view on the application of the principle in international law. The third chapter is a brief insight into how this principle is actually used in the current criminal process around the world and the different views of this principle across the world.

The fourth chapter is devoted to the application of the principle when closing a plea deal and further compliance with this principle when pleading guilty in Czech law. At the same time, both of these institutes of the criminal code are compared with foreign implementation, primarily in the United States of America, which was partly a model for Czech implementation. Although according to the explanatory report to the amendment of the Criminal Code, which brought plea deal into Czech legal system for the first time, the model used for this agreement was the regulation used in Slovakia and in the Federal Republic of Germany.

Klíčová slova: nemo tenetur principle, right against self incrimination, plea deal, plea bargain